VOLUME ELEVEN OF FOURTEEN

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Orangeburg County

Diane Schafer Goodstein, Circuit Court Judge

BAYAN ALEKSEY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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APPLICANT'S EXHIBIT 42-A, AUDIO CASSETTE
APPLICANT'S EXHIBIT 26-A, PHOTOGRAPH
APPLICANT'S EXHIBIT 26-B, PHOTOGRAPH
APPLICANT'S EXHIBIT 26-C, PHOTOGRAPH
APPLICANT'S EXHIBIT 26-D, PHOTOGRAPH
APPLICANT'S EXHIBIT 26-E, PHOTOGRAPH
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APPLICANT'S EXHIBIT 26-G, PHOTOGRAPH
APPLICANT'S EXHIBIT 77, PHOTOGRAPH
APPLICANT'S EXHIBIT 78, PHOTOGRAPH

When Mr. Aleksey filed the series of *pro se* lawsuits, Mr. Stone stated he sent him a letter on March 10 confirming that he could not assist him any lawsuit against the S.C.D.C. and possibly Orangeburg County because of his Insurance Reserve Fund representation. PCR R. 1225-26.

Mr. Stone, however, re-affirmed that the letter and lawsuits did not affect the manner he personally handled the defense. PCR R. 1226.

On re-direct Mr. Stone stated he had represented Willie Bamberg, the head of the detention center in Orangeburg in the past, but was unclear if he was representing him while representing Mr. Aleksey. PCR R. 1230.

b. Thomas Sims

Co-Counsel Thomas Sims testified that he spoke with Mr. Aleksey about the fact that he was a former prosecutor and during the conversation explained that Mr. Stone was currently a prosecutor part-time in another circuit. PCR R. 58-59. Mr. Sims, however, denied having any knowledge of what particular civil cases Mr. Stone was handling at that time. PCR R. 60-61. Mr. Sims acknowledged that a solicitor carried the same power of arrest any citizen had, but was unclear what, if any, power of arrest they had beyond that, although they frequently carried badges for identification purposes.[3] Mr. Sims acknowledged that there is a procedure for the Attorney General to assign another solicitor to handle conflict matters in a different circuit. PCR R. 66. However, Mr. Sims stated that Mr. Stone had no jurisdiction in the First Circuit and had not been granted any authority by Solicitor Bailey or the Attorney General. PCR R. 67-68.

[3] Solicitors and assistant solicitors do not possess a power of arrest greater than those of any citizen. The power of arrest is limited to "qualified" law enforcement officers certified through training at the Department of Public Safety. S.C. Code Ann. § 23-6-430 (1976).

On cross-examination, Mr. Sims stated he had discussions with Mr. Stone about whether his role in the Fourteenth Circuit would impact his ability to represent Mr. Aleksey. PCR R. 611. "At no time was I ever under the opinion or under the influence that he would not do what was required." PCR R. 611. He said Mr. Stone never suggested to him that he was acting under any conflicting loyalties. PCR R. 611. Mr. Sims never found that Mr. Stone suggested or failed to take any act based upon something that could impact other clients through the I.R.F., or for Orangeburg police or the detention center. PCR R. 611.

Mr. Sims declared that Mr. Aleksey never asked Mr. Stone to be removed from the case. PCR R. 612. Mr. Sims acknowledged that he talked with Mr. Stone about their experiences as prosecutors and how it gave them an understanding as to what a prosecutor might be looking for and how they would go about it. PCR R. 613.

c. Professor John Freeman

Professor Freeman, an expert in legal ethics, testified, over objection, concerning whether a conflict of interest existed in the representation by Mr. Stone and whether it was waivable. It was Professor Freeman's opinion that Mr. Stone should not have been in the case based upon his service as a part-time prosecutor, coupled with his civil work where he made money from representing law enforcement officials which compromised his independence and that somebody in this situation should not believe that representation would not be adversely affected. PCR R. 1453-54. He further opined that since this was a death penalty case the standards are high.

Professor Freeman opined that a conflict such as Mr. Stone's was not a waivable conflict. However, he opined that even if it was, the waivers were inadequate, particularly in a death penalty case because Mr. Aleksey was not informed of the potential negative side effects of Mr.

Stone's representation. PCR R. 1455. He stated more detail was necessary to cover the pluses, minuses and foreseeable consequences. PCR R. 1455-56.

Professor Freeman noted his reliance on S.C. Bar Ethics Advisory Opinion 77-2 which he opined had not been reversed which he summarized to find "a prosecuting attorney may not defend a criminal case in either federal or state court." PCR R. 1456. Also, he noted supportive of that conclusion A.B.A. Ethics Opinion 142. He noted that even if those opinions had been overturned, his opinion would be the same because the stakes are high in a death penalty case and the public is entitled to a proceeding that is squeaky clean and beyond reproach. PCR R. 1456-57.

On cross-examination, Professor Freeman noted that he felt the S.C. Bar Ethics Advisory Opinion he relied upon had not been revoked. Upon review of S.C. Bar Ethics Advisory Opinions 91-19 and 94-31, he noted there was no reference specifically revoking the opinion he referred to on direct. PCR R. 1458. He admitted that 94-31 stated:

> Additionally, we have held that absent some prohibition of law there's no per se ethical violation against an assistant solicitor representing criminal defendants in another circuit, citing 91-19.

PCR R. 1460:3-7. Further, he admitted S.C. Bar Ethics Advisory Opinion 91-19 stated:

> "In Ethics Advisory 82-26, Committee concluded that assistant solicitor, a public official, might have undue influence over the witnesses for a state, usually police officers or vice-versa. Rule 1.11 clearly prevents a lawyer from exploiting public office for the advantage of a private client.
>
> Rule 1.7 prevents a lawyer from representing clients with adverse interest. If the attorney reasonably believes that his position as assistant solicitor will not be used for the benefit of a private client in that

> his representation of the criminal defense client will not be adversely affected by his responsibilities as assistant solicitor, then he is free to undertake representation in other circuits."

PCR R. 1460. He was also not aware of Beaver v. Thompson, 93 F.3d 1186 (4th Cir. 1996), that holds that no conflict of interest exists [in a capital case] in trial Counsel's representation of a defendant, even though Counsel is a part-time prosecutor in a neighboring county. PCR R. 1461. Freeman declared, however, these don't change his view and "it's not the law of South Carolina." PCR R. 1461.

However, Professor Freeman admitted that Rule 1.7 does not state specifically that a part-time prosecutor cannot defend cases in another jurisdiction. He stated his interpretation is what a reasonable lawyer would conclude. Professor Freeman suggested a reasonable person would review South Carolina ethics advisory opinions in 1997 and 1998, but disagreed that a lawyer would have relied upon the 1991 and 1994 ethics opinions because he felt it was dicta because it did not pertain specifically to part-time prosecutors. PCR R. 1464. He noted that the 1982 opinion [82-26] precluded a part-time prosecutor from defending cases. He stated that the two more recent opinions are misrepresenting the earlier opinions and should be ignored.

Professor Freeman declared the practice of part-time solicitors defending defendants was wrong. PCR R. 1466.

Professor Freeman admitted that SCACR, Rule 608 required non-full time prosecutors to make themselves available for appointment in criminal cases. PCR R. 1467-68. Particularly, he agreed that Rule 608(d)(1) excluded from court appointment members of the Bar who are solicitors or assistant solicitors if those members do not engage in the private practice of law.

PCR R. 1468. However, he declared "it shouldn't be in a death case" or a murder case. PCR R. 1468.

Professor Freeman opined that he thought the on the record waivers were "superficial and improper waivers." He stated it was not explaining to his client that the fact that he worked with law enforcement and got along with law enforcement who is not the other side which would subconsciously make it more difficult to vigorously cross-examine law enforcement. PCR R. 1469-70. He opined that all the ramifications of the conflict were required to be disclosed, particularly under Bruce v. Leatherwood and an Oregon case.[4] PCR R. 1470. Professor Freeman stated Mr. Aleksey was not advised why Mr. Stone's representation was something that he should not waive, if asked and why independent Counsel would be better for him. PCR R. 1471.

3. Analysis

This Court must find that Mickens does not require relief in this matter because Mr. Aleksey has failed to satisfy his burden of proof in showing that Mr. Stone suffered under an actual conflict of interest due to his employment as a part-time prosecutor in another circuit.

First, the mere fact that Mr. Stone was a part-time prosecutor in Beaufort in the Fourteenth Circuit is not an actual conflict of interest. The South Carolina Supreme Court has not specifically addressed this issue upon a survey of its case law. In Beaver v. Thompson, 93 F.3d 1186 (4th Cir. 1996), the Fourth Circuit held that there was no conflict of interest in defense

[4] Apparently, Prof. Freeman was referring to Bankers Trust v. Bruce, 283 S.C. 408, 323 S.E.2d 523 (Ct. App. 1984). The Oregon case that he was referring to is In re: Boivin, 271 Or. 419, 533 P.2d 171 (1975).

Counsel's representation of a capital defendant even though Counsel was a part-time assistant prosecutor in a neighboring county. Like Mr. Stone, the Counsel in Beaver had limited duties and had no working relationship with any of the witnesses at trial. Similar holdings have been made by various state courts. State v. Gleason, 277 Kan. 624, 88 P.3d 218 (2004) (simultaneously serving as defense Counsel in one county and prosecutor in adjoining county does not create an actual conflict of interest); Ex Parte Borden, 769 So.2d 950 (Ala. 2000) (fact that defense Counsel worked as special prosecutor in different county did not establish conflict of interest); People v. Herr, 658 N.E.2d 1032 (N.Y. 1995) (same); People v. Burchette, 628 N.E.2d 1014 (Ill. App. 1 Dist. 1993) (same); Bumgardner v. State, 401 N.W.2d 211 (Iowa App. 1986) (no conflict between burglary defense representation and part-time city prosecutor in same county where city officers were involved in arrest, Counsel dealt solely with municipal charges and Counsel had no contact with county law enforcement agencies involved in arrest); compare People v. Washington, 461 N.E.2d 393 (Ill. 1984) (conflict where some of city police officers involved in arrest); State v. Clark, 744 A.2d 109 (N.J. 2000) (conflict for part-time municipal prosecutor to defend in same county since it created an appearance of impropriety).[5]

In compliance with S.C. Code Ann. Section 16-3-26, defense Counsel Stone was appointed to represent Mr. Aleksey. "This statute provides the exclusive procedure for appointment of Counsel for indigent defendants charged with capital murder." State v. Brown, 289 S.C. 581, 585, 347 S.E.2d 882, 884 (1986). In July 2000, SCACR Rule 608 was implemented to regulate the appointment of attorneys for indigent defendants. While Rule 608

[5] S.C. Code Ann. § 1-7-370 declares: "The solicitors may defend any persons brought to trial before any criminal courts of this State when their duty shall not require them to prosecute such persons and their assistance shall not be required against such persons by the Governor or Attorney General."

was not in place at the time of Counsel Stone's appointment, it would have similarly authorized his appointment. Rule 608 expressly includes among active members who are exempt from appointment: (B) Members who are solicitors or assistant solicitors for a judicial circuit if those members do not engage in the private practice of law..." (emphasis added). Counsel Stone was not exempt from appointment.

Rule 407, SCACR, Rule 1.7 addresses "conflicts of interest." It states:

> (a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:
>
> (1) The lawyer reasonably believed the representation will not adversely affect the relationship with the other client; and
>
> (2) Each client consents after consultation.
>
> (b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:
>
> (1) The lawyer reasonably believes the representation will not be adversely affected; and
>
> (2) The client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantage and risks involved.

Critical is the starting point of Mr. Stone's analysis - did Mr. Stone reasonably believe that his part-time solicitor job in Beaufort or his civil representation of public employees would not adversely affect his ability to defend a criminal defendant, and in particular - Bayan Aleksey. Mr. Stone was unequivocal - he felt then and now - that his representation of Mr. Aleksey would not be adversely affected. The issue then shifts to whether that belief was reasonable. This Court finds that the belief was reasonable.

Initially, from Mr. Stone's perspective at the time [and since] it was reasonable. He was aware that part-time prosecutors in one county in South Carolina had defended criminal cases outside of that assigned jurisdiction in the past (and since). PCR R. 1130-31. Similarly, he was not aware that part-time prosecutors were prohibited from representing criminal defendants, particular outside their jurisdiction. PCR R. 984. As a part-time solicitor, Counsel Stone was aware that he was not exempt from court appointment and was required to be placed upon an appointment list for either civil or criminal cases. PCR R. 985, 1131-32.

Concerning review of South Carolina Bar Ethics Advisory opinions, Mr. Stone stated that he had received material from S.C. Bar Ethics, but did not recall specifically that he had looked at the items provided at the hearing. PCR R. 982.

The chronology of the Ethics Advisory Opinions support Mr. Stone's actions based upon what a reasonable person would have found. Assuming arguendo, a reasonable lawyer would have searched those opinions, it is uncontradicted that the most recent ethics advisory opinion Mr. Stone would have found in 1997-98 addressing, in any manner, his issue is S.C. Bar Ethics Advisory Opinion 94-31 from January 1995, which stated: "additionally, we have held absent some prohibition of law, there is no per se ethical violation against an assistant solicitor

representing criminal defendants in another circuit. Advisory Opinion 91-19." Assuming a reasonable lawyer/person would continue to search and review Ethics Advisory 91-19, he would have found the following language:

> The question presented also refers to SC Bar Advisory On 82-26 which concluded that an assistant solicitor in one county could not represent criminal defendants in another county. That opinion does not apply to the question presented here; however, the committee takes this opportunity to point out that, as a result of the adoption of the Rules of Professional conduct effective September 1, 1990, there now is nothing in the Rules which automatically prohibits the conduct addressed in Advisory Opinion 82-26, provided it is not in the same judicial circuit. The attorney should be aware, however, that there are specific circumstances in which such representation could result in a violation of the Rules of Professional Conduct.
>
> In Advisory Opinion 82-26, the Committee concluded that the assistant solicitor as a public official might have undue influence over the witnesses for the state-usually police officers - or vice versa. Rule 1.11 clearly prevents a lawyer from exploiting public office for the advantage of a private client and Rule 1.7 prevents a lawyer from representing clients with adverse interests. If the attorney reasonably believes that his position as assistant **solicitor** will not be used for the benefit of a private client (see Rule 1.11) and that his representation of the criminal defense client will not be adversely affected by his responsibilities as assistant **solicitor** (see Rule 1.7(b)) then he is free to undertake such representation in other circuits.

The Applicant seeks to discount any potential reliance upon this advisory because it was not directed at the assistant prosecutor situation, but initially addressing a public defender scenario

and therefore it was dicta. It cannot be seriously questioned, however that a reasonable reading of the advisory would reveal the following:

1. S.C. Bar Advisory Op. 82-26 concluded an assistant solicitor in one county could not represent criminal defendants in another county.

2. The Committee opined that since the adoption of the 1990 Rules of Professional Conduct, "there is nothing in the rules which automatically prohibits the conduct addressed in Advisory Opinion 82-26, provided it is not in the same judicial circuit."

3. If the attorney reasonably believes that his position as assistant solicitor will not be used for the benefit of a private client and that his representation of the criminal defense client will not be adversely affected by his responsibilities, then he is free to undertake the representation in other circuits.

The Applicant, relying upon Professor Freeman's comments, suggests this was dicta and should have been ignored in favor of the 1982 opinion. Respondents respectfully submitted that a reasonable lawyer, particular subject to a court appointment with knowledge of the part-time prosecutor employment, would not have ignored or discounted these comments and assumed the advising was correct that the 1990 Rule change removed any per se prohibition to representation of criminal defendants. This Court concurs in Respondents assessment.

Mr. Aleksey has pointed out no precedent in a South Carolina court that Mr. Aleksey could have relied upon to address this inquiry. Assuming a reasonable lawyer would have then surveyed potentially binding precedent from the Supreme Court or United States Court of Appeals for the Fourth Circuit, he would have found the decision in Beaver v. Thompson, 93 F.2d 1186 (4th Cir. 1996), which held the fact that a defense Counsel in a capital case was a part-

time assistant prosecutor in an adjoining county did not establish a *per se* conflict of interest which would disqualify Counsel from the representation.

Against this consistent backdrop, this Court must find that Counsel Stone's impressions that he was not disqualified from his appointment were reasonable and that a reasonable lawyer in 1997 would have shared the same opinion.

Assuming that Mr. Stone was reasonable in his belief that there was no *per se* conflict, he was reasonable in his belief that his representation of Mr. Aleksey would not be adversely affected by his representation as an assistant solicitor. Again, the credible testimony of Mr. Stone suggests he revealed undivided loyalty to Mr. Aleksey. There has been no showing that the loyalty to Mr. Aleksey was impaired when Mr. Stone could not consider, recommend or carry out any appropriate course of action on behalf of Mr. Aleksey based upon Mr. Stone's other duties. Simply put, Mr. Aleksey has failed to show in any manner that Mr. Stone's professional judgment was materially interfered with in considering alternatives or foreclosing courses of action that should have been reasonably pursued on behalf of Mr. Aleksey.

Counsel Stone declared that nothing occurred during the Mr. Aleksey representation that caused him to think or hold back either on cross-examination or the development of evidence during his other practice. PCR R. 1132. He felt throughout that his work in the Solicitor's Office and I.R.F. work did not impact his ability to defend Mr. Aleksey. PCR R. 1134. In fact, Mr. Stone thought that his prior work as a prosecutor had given him a knowledge of police procedures that was useful in their defense. PCR R. 1134.

Importantly, his co-Counsel Thomas Sims, corroborated Mr. Stone's undivided loyalty to Mr. Aleksey. He stated that they had discussions about it and Mr. Sims was never of the opinion

that Mr. Stone would not do what was required, never found that he failed to take any act based upon something that could impact other clients. PCR R. 611.

In his brief before this Court, for the first time, he suggested that Mr. Stone's employment adversely affected the representation for the following speculations:

1. Mr. Stone relief upon the same methods of law enforcement investigation conducted by SLED in his prosecution function that he was called upon to attack in Mr. Aleksey's defense. (Applicant's Memo., p. 99)

2. Mr. Stone's employment precluded a change of venue motion which might have allowed the case to be transferred to Beaufort County, where attorney Mr. Stone would have been unable to continue in his representation. (Applicant's Memo., p. 99-100).

3. Mr. Stone's alleged loyalty to the I.R.F. affected his failure to argue that Mr. Aleksey's confession was the product of coercion and brutality at the hands of SLED Agents Mears and Darnell. (Applicant's Memo., p. 100-08)

4. Mr. Stone's I.R.F. representation of Trooper Lynn Stack, who did not testify, could have testified that Mr. Aleksey's hands were not covered in blood prior to GSR test to impeach Detective Gallup's testimony that she saw blood on his hands where Stack's statement make no reference to blood. (Applicant's Memo., p. 108-09).

5. Mr. Stone's loyalty to Detention Center Director Bamberg caused him to fail to present him as a witness concerning the escape to have rebutted the state's characterization of the circumstances of the escape attempt. (Applicant's Memo., p. 109-14).

Respondents submit that these specifications about alleged deficiencies were not the product of any alleged conflict of interest.

a. Methods of Law Enforcement

First, Mr. Stone's knowledge of methods of law enforcement investigation never adversely affected his representation. Second, Mr. Stone's "reliance" upon the same methods" of law enforcement investigation by SLED did not impair his defense, in any manner. Mr. Stone saw that his past experience in the Solicitor's Office had caused him to develop a knowledge of police procedures that would have worked to Mr. Aleksey's advantage. PCR R. 1134. There was nothing inherently antagonistic based upon this knowledge of techniques and procedures.

b. Change of Venue

The Applicant next contends his "conflict" precluded him from pursuing a change of venue motion which adversely affected him. There is no evidence to support that assertion.

The record is clear that the reason that a change of venue was not pursued was solely based upon both Mr. Stone and unaffected Counsel Sims' belief that Orangeburg County was the best county for them to try the case, even with the prior press coverage. Mr. Stone declared that on March 30, 1998, Counsel Sims had initially expressed a need to seek a change of venue. PCR R. 833-34. He said venue was a running concern and research was done throughout due to the tremendous amount of press coverage, which was consistent. However, Mr. Stone stated that the decision came down to where they would want to try the case. From a defense perspective, Orangeburg was their preferred choice for a death penalty case. PCR R. 834-35. Around May 11, 1998, Counsel Stone and Sims discussed not filing a change of venue motion. PCR R. 837.

Additionally, Mr. Stone declared that the reasons for not filing the change of venue motion were the fact that the earlier press coverage included favorable information about the negative gunshot residue tests on Mr. Aleksey which was favorable to them and a focus of the defense strategy at trial; and that he had spoken with capital defense expert David Bruck concerning his decision not to change venue in the death penalty trial for Susan Smith and his thought on it.

Mr. Stone stated, however, that the main reason a change of venue was not sought was that Orangeburg County was a favorable place because "people are not shy about questioning law enforcement." PCR R. 839. Further, he contrasted the attitudes he had observed from his experience in Beaufort where civil rights cases are not brought because it is not a favorable venue, whereas Orangeburg is different. As Mr. Stone stated, "Orangeburg is the best county...from the standpoint of the defense." PCR R. 840. Further, Mr. Stone noted that co-Counsel Sims had fairly strong numbers when he had run for Solicitor and he believed Mr. Sims would know many people there. PCR R. 840-41. Mr. Stone reasonably contrasted those options with the going to another county where they would not know anyone like Lee County or Dillon County. Mr. Stone saw an advantage to keeping the trail in Orangeburg, even though Sergeant Lingard was from Orangeburg. PCR R. 841-42.

Mr. Stone noted that the problem was that any jury would be sensitive to the death of a state trooper, but that concern was outweighed by the other factors favorable to Orangeburg. PCR R. 842-43. Mr. Stone stated he reviewed the newspaper articles, including articles that revealed Mr. Aleksey's long history of bad acts known to law enforcement and the coverage of

the bond hearing where Solicitor Bailey had stated that Mr. Aleksey was a suspect in a New York murder and a great flight risk. PCR R. 854.

Mr. Stone reiterated on cross-examination that after considering a change of venue during the representation, they decided against it because they preferred Orangeburg County. PCR R. 1151. Mr. Stone believed that Orangeburg juries question law enforcement more than other counties and is not a "pro-law enforcement" jurisdiction based upon his experience in representing law enforcement there and a general desire he has experienced to settle rather than try cases in Orangeburg. PCR R. 1151-52.

Co-Counsel Thomas Sims corroborated the reasons behind not seeking a change of venue were not adversely affected by Mr. Stone's involvement with the Fourteenth Circuit or I.R.F. matters. He stated that they had discussed change of venue and that a decision was made not to seek a change of venue based upon their opinion that Orangeburg remained the best place to try the case. PCR R. 618-19. He stated that decision was based upon his own experiences with Orangeburg juries willingness, even in the face of overwhelming evidence, to find a person not guilty, the racial make-up of the juries, and Mr. Sims credibility with the Orangeburg community. PCR R. 620. Importantly, Mr. Sims noted that they were satisfied with the jury and had not used all their peremptory challenges. PCR R. 623,[6] see also, PCR R. 70-82.

Contrary to the "*post hoc ergo propter hoc*" suggestions of the Applicant in his brief, the fact of Mr. Stone's employment with the Fourteenth circuit had no adverse impact on the decision on whether or not to seek a change of venue.

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[6] If a change of venue is sought on the basis of pretrial publicity, general practice is to postpone ruling until jury panel is voir dired. State v. Manning, 329 S.C. 1, 495 S.E.2d 191 (1997). A defendant who seeks a change of venue bears the burden of showing actual juror prejudice. State v. Gardner, 332 S.C. 389, 505 S.E.2d 338 (1998).

c. Confession as a Product of Brutality

Mr. Aleksey now also asserts that the I.R.F. representation and part-time prosecutor adversely impacted upon the decision on whether to pursue "brutality" claims during the confession. The record, again, does not suggest this adverse impact.

First, the record reveals a Jackson v. Denno hearing was held on June 8, 1998. R. 2218-2331. During the hearing, testimony was received from SLED Agents Mears and Darnell. Counsel Stone argued that the transcribed statement should not be admitted because after a two-hour gap, after he had declared, "that's all I have to say," Mr. Aleksey comes back on the tape crying and declares "I shot the trooper." R. 2326-27. Mr. Stone complained that there were no notes and no recording of what took place in the gap. R. 2326. Judge Cottingham admitted the statement, concluding that Miranda was satisfied and the statement was freely and voluntarily given without duress, coercion or other inducement. R. 2330.

Subsequently, the confession was introduced at trial for the jury's consideration as a fact finder in the guilt phase in a redacted form. R. 1578-79. It was introduced subsequently in the penalty phase.

At neither the Jackson v. Denno hearing nor the guilt or penalty phase was there evidence presented that Mr. Aleksey's statement was the product of brutality or undue coercion. Applicant contends a factual basis for this presentation derives from comments that Mr. Aleksey made to Thomas Sims that SLED beat the crap out of him (PCR R. 134, 141) and in a letter to Mr. Stone concerning beating the confession out of him. PCR R. 878.

The Applicant asserts that the failure to present the evidence of the "beating" was an adverse effect of the alleged conflict with Mr. Stone's other employment. However, the record conclusively reveals it was the result of the investigation that caused this decision.

From Thomas Sims perspective, although Mr. Aleksey had told him that SLED had beaten him (PCR 134, 141), he asked him specific questions about it because he had said they were beating him when they got him out of the car. PCR R. 139. Mr. Sims problem was that there was a videotape from the Highway Patrol his removal which showed no beating. PCR R. 139. The claim that Mr. Aleksey had made to him that they had pulled him out of the car, onto the ground, and began kicking him simply was not revealed. PCR R. 140-41. All that he had at the confession was the existence of crying, without any witness to suggest why. PCR R. 140. Although Mr. Sims admitted crying may be indicative of a beating, he acknowledged that Mr. Aleksey had been crying during their own interviews. PCR R. 140. Mr. Sims further opined that in their investigation of the claims, there was no believable evidence or factual basis to support that there was either physical violence or threats during the two hour gap period. PCR R. 614-16.

Mr. Stone credibly testified that he had reviewed in March 1998, letters from Mr. Aleksey that suggested the confession was beaten out of him. PCR R. 877-78, 881-82. Mr. Stone said a problem with his belated assertions of beating was the lack of consistency with Mr. Aleksey's telephone call to WIS-TV. At one point Mr. Aleksey had described to him that one SLED agent hit him in the chest and another told him that he had killed a friend of his and that he would not get out alive. PCR R. 878, 881.

Mr. Stone stated that he investigated the matter by attempting to determine if the officers were "closers" and sought an F.O.I.A. to get their history with successful confessions. PCR R. 888-89. He stated he did not argue "beatings" where he sought to infer "something" happened in the two-hour gap. PCR R. 895.

Mr. Stone stressed that Applicant's comment about being coerced was inconsistent with his WIS interview. PCR R. 902, 1147. Mr. Stone recalled that during the WIS interview, which was a telephone call with a female reporter, the Applicant's response to the reporter was "he was under a lot of pressure to give that statement" or "[i]t was a lot of pressure" to the reporter's questions about what kind of pressure he was talking about involving making the statement. PCR R. 902. At no point during the interview, according to Mr. Stone's recollection, did the Applicant specifically say "they beat the confession out of him" when he had the opportunity. PCR R. 1147. Mr. Stone stressed that in his own discussions with Mr. Aleksey other than saying he was being coerced or pressured to confess, there was no physical contact evidence to present. Further, Mr. Stone had discussed with Mr. Aleksey testifying at trial or at the Jackson v Deno hearing and they decided he would not. PCR R. 1149.

Mr. Stone testified that his work with the Insurance Reserve Fund or solicitor's office did not impact his presentation challenging Mr. Aleksey's confession.

d. I.R.F. Representation of Trooper Lynn Stack

In his brief before this Court, Applicant asserts that his representation was adversely affected by Mr. Stone's I.R.F. representation of Trooper Lynn Stack. He contends that this conflict was revealed post hoc by the fact that Trooper Stack was not called by the defense to rebut an assertion that Mr. Aleksey had blood on his hands which would affect a gunshot residue test where Trooper Stack, like Detective Katherine Gallup failed to include that information in the written statement. See R. 1103, 1108, 1110. The prosecution used this evidence from Det. Gallup to explain by inference the lack of gunshot residue.

The Applicant asserts that Mr. Stone represented Trooper Lynn Stack through assignment from the Insurance Reserve Fund. Applicant's Memo., p. 108. The record does not support that assertion. Instead, it reveals that Mr. Stone never represented Lynn Stack. PCR R. 792, 805, 806. Mr. Stone did acknowledge that he had spoken with Trooper Stack about an incident involved in the civil litigation of L.F. Brown v. [Trooper] Sheldon.. PCR R. 790-92. Mr. Stone was handling that matter until August 19, 1998, prior to the start of the Mr. Aleksey trial, but during Mr. Stone's representation of Mr. Aleksey. PCR R. 791. Mr. Stone admitted that he had spoken with Trooper Stack about the Brown case, but "I don't believe he was a part of that case." PCR R. 805.

Subsequent to the hearing before this Court, Mr. Aleksey, through Counsel, proffered Applicant's Exhibit 96, which is an affidavit of Trooper Anthony Lynn Stack, dated January 2, 1998, involving the December 31, 1997 incident. The affidavit makes no reference to the Applicant. The affidavit corroborates Deputy Lin Shirer's testimony that Trooper Stack was one

of the first people to arrive at the scene of the shooting and approached the body of Sergeant Lingard, but makes no reference to any contact with Mr. Aleksey.

The Applicant, at the hearing, referred to R. 970-71 where Calhoun County Deputy Lin Shirer testified that he was with Sergeant Lingard on December 31, 1997 when he attempted to stop Mr. Aleksey's mustang. R. 958. After describing the gunfire and seeing Sergeant Lingard fall to the ground, he described firing toward the Mustang. R. 964-70. After he made the call on the radio, he stated that Trooper Lynn Stack was among the first to arrive at the scene. R. 970. He stated that Trooper Stack was not at the scene long and he and Detective Casey Gallup left in pursuit.[7] R. 970-71.

Detective Katherine Gallup testified that she was riding with Trooper Stack that evening. R. 1103. She described the arrival at the scene and then the departure two minutes later on I-95. R. 1107. She stated that when she arrived at the K-Mart parking lot, she observed a number of other police officers and a wreaked Mustang. Particularly, she saw Mr. Aleksey handcuffed laying on his stomach with blood on his hands and face with EMS working on him. R. 1108.

On cross-examination, Mr. Stone sought to impeach Det. Gallup by noting that there was nothing in her statement about blood on his hands. R. 1110.

Subsequently, Trooper Robert Beres also indicated Mr. Aleksey had blood on his hands and a cut on his face. R. 1118 (bleeding cut on forehead); p. 1125 (blood on hands). Subsequently, in response to a telephone call from SLED Capt. L. C. Knight, Trooper Beres's requested that the nurses bag Mr. Aleksey's hands, which they did. R. 1126. On cross-examination of Trooper Beres, Counsel Stone questioned the manner in which Mr. Aleksey was

[7] The Court notes that the Detective Casey Gallup referenced in the trial record is Detective Katherine Gallup.

handcuffed and the fact that nothing in Beres statement mentioned specifically Mr. Aleksey grabbing his hands or that Mr. Aleksey had blood on his hands. R. 1130.

EMS paramedic Tara Clark described arriving at the parking lot after Mr. Aleksey had already been handcuffed and described, on cross-examination from Counsel Sims, that Mr. Aleksey did not have profuse bleeding (R. 1145), but did not recall anything out of the ordinary about his hands. R. 1147. She did not recall if there was any blood on his hands, but noted that there was so much going on that night. R. 1148.

The state never called Trooper Stack to testify in this case. In light of this record, it would be incredible to suggest that Trooper Stack was not called by the defense to be affirmatively impeached about a speculative matter because of a conflict of interest; particularly when Mr. Stone, in fact, did cross-examine Trooper Beres, a state witness. The Applicant has failed to sustain his burden as it relates to the reason the defense failed to call Trooper Stack. As Counsel Stone unequivocally testified, if there had been something helpful in the affidavit, he would have called Trooper Stack as a witness. PCR R. 822.

e. Representation of Orangeburg Detention Center Director Willie Bamberg and Escape and Prison Adaptability Issues

In the memorandum, Mr. Aleksey claims that Mr. Stone's failure to present the testimony of Director Willie Bamberg was caused because of a conflict he had because he represented Mr. Bamberg in other civil actions. He contends that Mr. Bamberg should have testified to reveal that the "attempted escape" charge against Mr. Aleksey was made only as a matter of jail policy, not because they believed Mr. Aleksey actually intended to escape and that one event was the only infraction Mr. Aleksey had while at the Detention Center before he was then transferred to Lee Correctional Institution as a safekeeper.

Mr. Aleksey further alleges Mr. Stone's conflict in representing Mr. Bamberg impacted Mr. Stone's decision to present a prison adaptability expert, because it would then have invited the prosecution to call Mr. Bamberg as a witness and Mr. Stone would have been forced to cross-examine his own client - Mr. Bamberg.

Mr. Aleksey's speculation and re-creation of the facts ignores the fact that he failed to show an actual conflict of interest that adversely affected his representation. At trial, former Orangeburg Detention Center Officer Maurice Keitt testified on January 27, 1998, Mr. Aleksey told him that he had just knocked one of the small windows out. R. 1970. He sated he saw that the window was broken out and that Mr. Aleksey had broken a metal stool from the stand that was attached to the floor. R. 1971. When Mr. Keitt asked Mr. Aleksey why, he declared he was frustrated. R. 1972, 1974. He said Mr. Aleksey was sent to "safekeeping" shortly after this which, in his experience, was where people were sent if they might hurt themselves or escape or be a high risk. R. 1973.

Deputy Director of the Orangeburg Detention Center, Vernetia Dozier, testified that she had received a report that on January 27, 1998, Mr. Aleksey had taken a stool and ripped the stool off the wall and had broken the window out of the cell. R. 1978. She stated that based upon this conduct, they initially signed a warrant for the damage done to the jail and attempted escape and sent him to safekeeping. R. 1978. She described safekeeping as a place where they send inmates that are hard to handle or an escape risk. R. 1978.

On cross-examination, Counsel Stone had Ms. Dozier describe the movement from the normal cells to an upstairs room. Importantly, she stated that it was department policy to charge anyone who cracks or breaks a window with escape if it is an exterior window. R. 1979. Mr.

Stone had her describe that to escape, the inmate would have to get through the window, then through the jail yard, then over the fence with razor wire. R. 1979. Further, on re-direct, she declared no one had gotten through the type of small window Mr. Aleksey broke. R. 1980.

On re-cross, Ms. Dozier stated that Mr. Aleksey did not escape from his jail cell and she was informed that he called for help after he broke the window. R. 1981.

The next day of the sentencing hearing, Solicitor Bailey noted that Director Dozier had made an unresponsive comment that revealed there was a warrant for escape. R. 2024. Solicitor Bailey felt that a curative instruction to disregard the evidence about the escape warrant would be appropriate.

Counsel Stone requested the curative instruction "to disregard any of the questions concerning escape." R. 2024-25.

Judge Cottingham concluded that he would tell the jury to disregard that in its entirety and that there is no warrant for escape. R. 2025. During the instructions, the jury was instructed:

> This defendant is not charged with escape. There is no escape warrant outstanding. You must disregard that testimony in its entirety. It has nothing to do with the trial of this case.

R. 2028:13-17.

Mr. Stone testified that he did not recall representing Willie Bamberg while he was representing Mr. Aleksey. PCR R. 782. However, Mr. Stone represented the named "John Doe, Warden" in Charles W. Tyler v. Sheriff Bing Jones, from July 31, 1996 through February 10, 1998.. PCR R. 806-07; See Applicant's Exhibit 86.

Mr. Stone stated Mr. Bamberg was in an official capacity so his dealings would have been brief. PCR R. 822. Because Mr. Aleksey was charged with escape, but at some point he

felt that prison life would be discussed and Mr. Stone wanted to be sure that the escape charge was not a realistic escape and he thought that it was sewn up at trial and did not become an issue. PCR R. 823.

Mr. Stone stated that he did not hire a prison adaptability expert because he felt such testimony frequently backfires.. PCR R. 1224. He was not aware of evidence to indicate that Mr. Aleksey was particularly adaptable to prison. PCR R. 1224. In addition to the damage to the chair and window, and there were lawsuits he had filed and Mr. Stone felt it was a big risk and not credible at that point. PCR R. 1225.

Mr. Stone stated he advised his client that he could not become involved in the lawsuits and wrote a letter and explained it to him on March 19. However, Mr. Stone testified that this letter did not affect the way the criminal defense was handled. PCR R. 1226.

Mr. Stone stated that his notes revealed at some point in the representation he or Mr. Sims spoke with Mr. Bamberg concerning the escape incident. PCR R. 1229. He stated that they learned anytime a window was broken they were going to call it escape. PCR R. 1229.

In preparation for the defense, Counsel had contacted Detention Center Director Bamberg who prepared an affidavit on May 20, 1998 [Exhibit 87]. In the affidavit, he described the fact the charges were made "because he threw a chair into the window in his cell. The window measures twenty-six and one-half inches long and five inches wide. This was the only infraction that the Defendant had during his stay in the Orangeburg Detention Center."

The Applicant has failed to show that his other representation including his apparent work with Willie Bamberg created an actual conflict which adversely affected his representation. First, it is clear it did not impede his investigation of alleged jail escape where the defense was

able to procure, without formal discovery, a favorable affidavit from Mr. Bamberg. Second, it did not interfere with Mr. Stone's ability to cross-examine the jail employees and develop similar information which limited the impact of their testimony. Contrary to the speculative claims of Mr. Aleksey, Mr. Stone decision not to present adaptability testimony was not based upon any fear of cross-examining his "clients", but his belief that such adaptability testimony has little persuasive value and can backfire. Further, the favorable information, - the unlikelihood of escape through the window, the policy to charge based upon a broken window and the lack of any other violation were presented to the jury. Applicant's claim for the reasons stated is denied on this basis.

Summary

The Sixth Amendment right to effective assistance of Counsel includes the right to representation free from any conflict of interest that impairs Counsel's efforts on behalf of his/her client. When Counsel suffers from an actual conflict of interest, prejudice is presumed. An actual conflict of interest means a conflict that affected Counsel's performance, as opposed to a mere theoretical division of loyalties. Thus, in order to prove that trial Counsel was acting under an actual conflict of interest, Mr. Aleksey must prove that his trial Counsel's interests diverged with respect to a material, factual or legal issue or a course of action.

In conclusion, Mr. Aleksey claims that Duffie Stone, one of Mr. Aleksey's trial attorneys, was acting under an actual conflict of interest at the time of trial, which deprived him of his Sixth Amendment right to effective assistance of Counsel. This Court finds that no such actual conflict existed. At the time of Mr. Stone's representation of Mr. Aleksey, Mr. Stone was a part

time solicitor in Beaufort County.[8] Mr. Stone also performed work for the South Carolina Insurance Reserve Fund, which insures state agencies, including Detention Facilities and the Department of Public Safety. In this capacity, Mr. Stone represented employees of the Orangeburg County Detention Center as well as employees of the South Carolina Department of Public Safety, namely Highway Patrol troopers. It is uncontroverted that Mr. Stone disclosed these matters to Mr. Aleksey and to the Court repeatedly, and it is undisputed that Mr. Aleksey was advised by and examined by the Court three times regarding Mr. Stone's other representations. Mr. Aleksey on each occasion confirmed his understanding and desire to have Mr. Stone continue to represent him.

C. **Applicant's right to Counsel, as guaranteed by the Sixth Amendment and Fourteenth Amendment of the United States Constitution and Article 1, Section 14 of the South Carolina Constitution and South Carolina law including S.C. Code Sections 16-3-26(B)(1) and 17-23-60, was violated as a result of his representation throughout the pre-trial and trial proceedings by trial Counsel who labored under an actual conflict of interest arising from trial Counsel's simultaneous employment with the South Carolina Insurance Reserve Fund. See Mickens v. Taylor, 535 U.S. 162, 122 S.Ct. 1237 (2002); Cuyler v. Sullivan, 446 U.S. 335 (1980); Holloway, et al. v. Arkansas, 435 U.S. 475 (1978); and Thomas v. State, 346 S.C. 140, 551 S.E.2d 254 (2001).**

Insurance Reserve Fund Conflict Issue

In ground C, the Applicant contends that Mr. Stone's representation of civil clients pursuant to assignment from the Insurance Reserve Fund created an actual conflict of interest. Particularly, he asserted that prior assignments involving the South Carolina Highway Patrol and

[8] It should be noted that Mr. Stone never served as a prosecutor in Orangeburg County.

Orangeburg County, where the victim was a Highway Patrolman and the matter was investigated by Orangeburg authorities created an actual conflict of interest.

As stated in Ground B, the Applicant has failed to prove an actual conflict of interest. For the reasons set forth therein, relief on this allegation must be denied. Accord Mickens v. Taylor, supra.

D. Applicant's right to Counsel, as guaranteed by the Sixth Amendment and Fourteenth Amendment of the United States Constitution and Article 1, Section 14 of the South Carolina Constitution and South Carolina law including S.C. Code Sections 16-3-26(B)(1) and 17-23-60, was violated as a result of his representation throughout the pre-trial and trial proceedings by trial Counsel who labored under an actual conflict of interest arising from trial Counsel's simultaneous employment as an attorney for the South Carolina Department of Corrections. See Mickens v. Taylor, 535 U.S. 162, 122 S.Ct. 1237 (2002); Cuyler v. Sullivan, 466 U.S. 335 (1980); Holloway, et al. v. Arkansas, 435 U.S. 475 (1978); and Thomas v. State, 346 S.C. 140, 551 S.E.2d 254 (2001).

Insurance Reserve Fund - SCDC - Conflict Issue

In allegation D, Mr. Aleksey had claimed that a conflict of interest was created because of assignment of civil cases from the Insurance Reserve Fund in which he handled some matters for the South Carolina Department of Corrections or certain specified correctional employees. In his third allegation, Mr. Aleksey asserted this ground was abandoned. Therefore, it must be dismissed due to lack of prosecution with prejudice. Accord Crestwood Golf Club, Inc. v. Potter, 328 S.C. 201, 493 S.E.2d 826 (1977) (court has inherent power to dismiss based upon failure to prosecute). See S.C. Rules of Civil Procedure, Rule 41(2); 41(b) (dismissed with prejudice for failure to prosecute).

E. Applicant's right to Counsel, as guaranteed by the Sixth Amendment and Fourteenth Amendment of the United States Constitution and Article 1, Section 14 of the South Carolina Constitution and South Carolina law including S.C. Code Sections 16-3-26(B)(1) and 17-23-60, was violated as a result of the trial court's failure to procure a valid waiver from the Applicant of his lead trial Counsel's actual conflict of interest which arose from trial Counsel's simultaneous employment as an attorney for the South Carolina Insurance Reserve Fund. Mickens v. Taylor, 535 U.S. 162, 122 S.Ct. 1237 (2002); Cuyler v. Sullivan, 446 U.S. 335 (1980); Holloway, et al. v. Arkansas, 435 U.S. 475 (1978); and Thomas v. State, 346 S.C. 140, 551 S.E.2d 254 (2001).

Inadequate Waiver of Illegal Conflict of Interest

The Applicant contends that there was no valid waiver of the alleged conflict of interests. He relies upon the decision in U.S. v. Schwarz, 283 F.3d 76 (2nd Cir. 2002). In Schwarz, the Second Circuit recognized that in most cases where an attorney has an actual or potential conflict of interest, it was possible for a defendant to waive his right to conflict free Counsel in order to retain his Counsel of choice. However, the court also recognized that not all conflicts could be waived stating: "an actual or potential conflict cannot be waived if, in the circumstances of the case, the conflict is of such a serious nature that no rational defendant would knowingly and intelligently desire that attorney's representation. Schwarz, F.3d at 95-96. The court asserted that unwaivable conflicts were those where Counsel himself or herself was accused of participating in the criminal activity related to the defendant's crimes and his or her own "self-interest" or "self-preservation" to avoid criminal charges or reputational damage would affect virtually every aspect of the representation of the defendant. The court equated that conduct with the conflict in Schwarz where Counsel Worth's loyalties to the police union and a $10,000,000.00 retainer. Concluding the Schwarz's representation was in conflict with his ethical obligation to the police union as a client, but his substantial self-interest in a two-year 10

million dollar retainer with the union, which was revocable, created a strong personal interest in refraining from any conduct which the union might object. The Applicant equates the self-interest in the $10 million retainer and conflicting interest in placing blame upon another police officer, with Mr. Stone's alleged self-interest to curry favor with law enforcement and his hopes of further assignment of cases from the Insurance Reserve Fund. Those assertions are simply inadequate to raise the suggestion that Mr. Stone's representation would be guided by "self-preservation" as suggested in Schwarz.

First, as set out in allegation B, the Applicant failed to prove an actual conflict of interest, as defined in Mickens and Cuyler. Absent such interest, the question of waiver" is moot. Relief should not be granted. See, State v. Gregory, 364 S.C. 150, 612 S.E.2d 449 (2005) (actual conflict in representing defendant and assistant prosecutor handling defendant's case).

Second, the alleged "conflicts" were not the type, as suggested in Schwarz that are unwaivable. Possible conflicts that pertain to someone other than the defendant or the self-interest of the Counsel must be considered subject to waiver. See; Duncan v. Alabama, 881 F.2d 1013 (11th Cir. 1989) (murder prosecution where attorney in defense Counsel's firm was representing victim at time of death); People v. Martinez, 869 P.2d 519 (Colo. 1994) (murder trial where defense represented state witness on unrelated charge); State v. Roman, 596 A.2d 930 (1991) (manslaughter charge where defense had represented victim); Chandler v. State, 859 S.W.2d 764 (Mo. Ct. App. 1993) (defense Counsel represented state witness and murder victim's brother).

While the Court concludes that Cuyler does not extend to "successive representations", as suggested in Mickens, assuming that it does, it was a waivable conflict in this setting concerning

Mr. Stone's practice both as a part-time solicitor and civil practitioner with many public sector clients. As stated in Holloway v. Arkansas, 435 U.S. 475, 483 n. 5 (1978), a defendant may waive his right to the assistance of Counsel who is unhindered by conflicts. As set out in this order, there was on-the-record inquiry of Mr. Aleksey on February 2, 1998 (part-time solicitor, insurance reserve fund work, state agencies, police agencies, highway patrol) (Feb. 2, 1998, TR. 5-7, PCR R. 737-39), May 20, 1998 (part-time solicitor in 14th Circuit not connected with Orangeburg) (R. 2192-93); and August 24, 1998 (part-time solicitor contract with 14th Circuit in Beaufort, not the Orangeburg Circuit, Insurance Reserve Fund work which insures state agencies, including the Department of Public Safety) (R. 181-82). The trial judge's conclusions supported the waiver.

It has been stated that a valid waiver of a conflict of interest must be voluntary, knowing, and intelligent, such that the defendant is sufficiently informed of the consequences of his choice. See Thomas v. State, 346 S.C. 140, 551 S.E.2d 245 (2001). There the Court held that the waiver of the potential conflict did not act as a waiver of the actual conflict which presented itself.

This Court recognizes that the waivers could have been more specific to speculate about potential events which did not occur. However, the waivers were adequate to address what did occur, the potential for divided loyalties.

While there is no question that Mr. Aleksey was aware of his right to Counsel wholly free of any potential conflicts, he agreed to and affirmatively informed the Court repeatedly he wished to continue with Mr. Stone's representation. The failure to more thoroughly explain possible dangers and consequences (which never arose) did not invalidate the waivers.

In summary, this Court concludes that Mr. Aleksey knowingly and intelligently waived any potential conflict which may have existed with regards to Mr. Stone's other representations. This issue is directly addressed by the South Carolina Bar Ethics Commission. The South Carolina Bar Ethics Advisory Opinion 94-31 states in part, "we have held that absent some prohibition of law, there's no per se ethical violation against an assistant solicitor representing criminal defendants in another circuit." Furthermore, the South Carolina Bar Ethics Advisory Opinion 91-19 states, "Rule 1.7 prevents a lawyer from representing clients with adverse interests. If the attorney reasonably believes that his position as an assistant solicitor will not be used for the benefit of a private client in that his representation of the criminal defense client will not be adversely effected by his responsibilities as an assistant solicitor, then he is free to undertake representations in other circuits." As a result of the reasons stated above, this Court finds that Mr. Aleksey has failed to prove that Mr. Stone was representing Mr. Aleksey while acting under an actual conflict of interest. Further, this Court finds that for any appearance of conflict, there was a knowing and intelligent waiver by Mr. Aleksey, and Mr. Aleksey was fully advised of any appearance of conflict, both by Counsel and by the Court. As a result, this Court denies the Applicant's request for relief on Ground E and G and as it pertains to Ground B and C on this alternative ground.

F. **Applicant's right to Counsel, as guaranteed by the Sixth Amendment and Fourteenth Amendment of the United States Constitution and Article 1, Section 14 of the South Carolina Constitution and South Carolina law including S.C. Code Sections 16-3-26(B)(1) and 17-23-60, was violated as a result of the constructive absence of Counsel at the hearings regarding Applicant's lead trial Counsel's conflicts of interests. See U.S. v. Cronic, 466 U.S. 648, 659 (1984); Brooks v. Tennessee, 406 U.S. 605 (1972); and Frett v. State, 298 S.C. 54, 378 S.E.2d 249 (1988).**

Absence of Counsel at Conflict Hearings

On allegation F, Mr. Aleksey contends that there was a constructive absence of Counsel for Mr. Aleksey at the conflict hearings because Mr. Sims failed to adequate provide independent advice that Mr. Stone's representation was improper and Mr. Stone was unable to assist him. Applicant's Memo., p. 114-17. Mr. Aleksey expands the presumption of prejudice standard of U.S. v. Cronic, 466 U.S. 648, 104 S.Ct. 2035, 80 L.Ed.2d 657 (1984). For the reasons previously set out in grounds B through E, this Court must deny the relief requested.

The Applicant's reliance on Cronic is misplaced. Applicant attempts to equate Cronic's complete absence of Counsel, with Mr. Sims alleged deficiency in advice at the waiver hearings. The issue of critical" stage is not relevant because Counsel Sims, as well as allegedly conflicted Counsel Stone, was presented during the three (3) separate hearings.

In Florida v. Nixon, 543 U.S. 175, 125 S.Ct. 551, 160 L.Ed.2d. 565 (2004), the Supreme Court explained the Cronic's presumption of prejudice was only applicable in a few narrow settings. The Court instructed that the Cronic presumption would be in order "in circumstances that are so likely to prejudice the accused that the cost of litigating their effect in a particular case is unjustified." In Bell v. Cone, 535 U.S. 685, 122 S.Ct. 1843, 152 L.Ed.2d 914 (2002), the

Court held that for Cronic's presumed prejudice standard to be applied, Counsel's failure must be "complete." As asserted by Mr. Aleksey, the failure was not complete nor created a Cronic type circumstance.

This case does not present a complete denial of Counsel at a critical stage because Applicant had two appointed Counsel present at the hearing where waiver was addressed. See Cronic, 466 U.S. at 657. It was not proved that there was entire failure to subject the prosecution's case to meaningful adversarial testing. Compare, Florida v. Nixon, supra. (Confession of guilt does not lead to Cronic standard). Nor was it a belated designation of Counsel, immediately prior to trial. Cronic, supra (citing Powell v. Alabama, 287 U.S. 45 (1932)).

Counsel Sims testified that he had discussions with Mr. Stone, after Mr. Sims appointment about his knowledge of Mr. Stone's other representations and his loyalty to Mr. Aleksey. PCR R. 611-12; compare, PCR 66-68. Further, Mr. Sims testified that prior to the first waiver hearing he had discussions with Mr. Aleksey about Mr. Stone's role with the Fourteenth Circuit Solicitor's Office. PCR R. 611-12. However, Mr. Sims did not recall ever discussing about any potential conflict Mr. Stone had with defendants Mr. Aleksey sought to sue *pro se* (where Mr. Stone did not represent any of those individuals in those underlying civil actions). Mr. Sims further did not discuss the possibility that at some future time Mr. Stone could be a prosecutor in Orangeburg County. App. 67-68.

Contrary to the Applicant's claims, the applicant's waivers do not invoke the Cronic exceptions of constructive denial of Counsel. Under Cronic and its progeny, a defendant is denied Counsel when there is an "actual or constructive denial of the assistance of Counsel

altogether; when Counsel is burdened by an actual conflict of interest (under Cuyler v. Sullivan, supra); or where there are "various kinds of state interference with Counsel's assistance." Strickland, 466 U.S. at 692; see also Cronic, 466 U.S. at 658.

Here, the representation of Mr. Aleksey by Mr. Sims was not impaired by either a potential or actual conflict. Contrary to the claims of Mr. Aleksey, he was never without Counsel. Even if Mr. Stone was unable under Applicant's theory to provide advice on the conflict issues, Mr. Sims was available and could and did consult with Mr. Aleksey throughout. Applicant's claim of "actual or constructive denial of Counsel" during a critical stage claim must be denied. See Ex Parte McFarland, 163 S.W.3d 743, 752-53 (Tex. Crim.App. 2005) (there was no actual or constructive denial of Counsel where lead Counsel had postprandial naps during critical stages, where defendant had second, albeit less experienced Counsel present); see also, Annotation, Circumstances giving rise to prejudicial conflict of interests between criminal defendant and defense Counsel - state cases, 18 A.L.R. 4th 360.

G. Applicant was denied the effective assistance of Counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article 1, Section 14 of the South Carolina Constitution and South Carolina law including S.C. Code Sections 16-3-26(B)(1) and 17-23-60 by trial Counsels' failure to provide enough information to Applicant to enable Applicant to make a voluntary, knowing, and intelligent waiver of an actual conflict of interest, which arose during Applicant's proceedings, or to insist upon the appointment of alternate Counsel who did not labor under a conflict of interest. Strickland v. Washington, 466 U.S. 668 (1984) and Thomas v. State, 346 S.C. 140, 551 S.E.2d 254 (2001) (Petitioner has shown an actual conflict of interest that adversely affected her attorney's performance. Further, her initial waiver of a potential conflict did not act as a waiver of this actual conflict.)

Trial Counsel's Failure to Provide Mr. Aleksey Enough Information to Enable Mr. Aleksey to Make a Knowing and Intelligent Waiver

In ground G, Mr. Aleksey contends he was denied effective assistance of Counsel based upon trial Counsel's alleged failure to provide sufficient information to Mr. Aleksey to enable him to make a knowing and intelligent waiver of his right to Counsel. The Applicant asserts that (1) there was no evidence that Mr. Stone's representation would preclude the defense from seeking a change of venue motion as a "plausible alternate strategy"[9] (Applicant's Memo., p. 100), that his I.R.F. representations would impair his ability to raise brutality claims[10] (Applicant's Memo., p. 101, 105), that impact the *pro se* lawsuits had against officers and or agencies that Mr. Stone had or might represent in the future[11] (Applicant's Memo., p. 105), any

[9] There is no evidence that a change of venue motion would have been precluded by Stone's representation or otherwise. The matter was not pursued solely based upon the strategic decision.

[10] As stated within ground B, the brutality claims were not raised based upon a lack of evidence and Aleksey's own public and inconsistent statements.

[11] Testimony was presented at the hearing that Stone wrote Aleksey and stated that he would not be able to help him with any lawsuit against the prison "as I explained this to you before...I would have a conflict of interest bringing a civil lawsuit against an agency I represent." Exhibit 59, PCR770. The reference in the Memo., p. 105, to

risk from his insurance fund, (Applicant's Memo., p. 107), nor any risk concerning his ability to counter safekeeping arguments. Applicant's Memo., p. 113.

As stated earlier in ground B, each of these were addressed at trial or the PCR hearing and did not evolve from any "conflict." The Applicant has failed to assert precisely what information Mr. Aleksey lacked concerning Mr. Stone's past representation or real risks, not sheer post hoc speculation unrelated to the conflict claimed.

For the reasons previously stated in this brief related to grounds B, C, E and H and above, Applicant has failed in his burden of proof to show any entitlement to his claim concerning waiver.[12]

H. Applicant was denied the effective assistance of Counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article 1, Section 14 of the South Carolina Constitution and South Carolina law including S.C. Code Sections 16-3-26(B)(1) and 17-23-60 by trial Counsels' failure in the Jackson v. Denno hearing to argue that Applicant's "confession" was improperly induced by a promise and involuntary. Strickland v. Washington, 466 U.S. 668 (1984).

IAC and Failure to Present Evidence of Alleged Promisesof Leniency.

The Applicant contends that trial Counsel were ineffective based upon their failure to seek to have the confession suppressed based upon an assertion that it was induced by a promise

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Stone's testimony about February 1998 on PCR 736-37 is out of context and pre-dates the filing of the lawsuits identified on Applicant's Exhibit 58, which were brought beginning May 1998. At no time was Stone, by virtue of his court appointment, authorized or obligated to bring civil actions on Aleksey's behalf.

[12] The court should note that Aleksey did not testify at the PCR hearing that he was either misadvised or inadequately advised about the waiver. More importantly, he failed to show a reasonable probability that the trial result would have been different had Aleksey's waiver interrogation by the Court resulted in Stone's removal.

of leniency or reward.[13] Particularly, he contends that the statement given was induced by a promise that he would be returned from solitary confinement to the general prison population. He now contends this benefit, under the decision in State v. Peake, 291 S.C. 138, 352 S.E.2d 487 (1987).

1. How the issue was raised at trial

During the Jackson v. Denno hearing, SLED Agent Kenneth Mears testified about giving the Miranda warnings and an initial statement of Mr. Aleksey in which he declared, at the conclusion "that I have nothing else to say" or "all I've got to say." R. 2312, 2320. See also R. 2300 (Darnell). Agent Mears stated the tape was cut off, but Mr. Aleksey continued to talk and made reference to his concern about Ms. Perez Blackwell, the kids, and Ms. Batkilina. R. 2312. He also asked if he could get back into the general prison population. R. 2312:21-22. Agent Mears stated he contacted his supervisor, Capt. Knight and gave him the information. Agent Mears stated that he initially told Mr. Aleksey that they could not promise him movement, but would see what could be done. R. 2313. Agent Mears eventually contacted the Detention Center and inquired of the Assistant Director (Dozier) about Mr. Aleksey being in the general population or was there another secure place without being in the infirmary or lock-down. R. 2313.

> Q. All right, sir. And what is it that specifically led up to the tape going back on?
>
> A. He stated to us, when I say "he" I am talking about Mr. Aleksey, stated to us that if he told us the honest truth, if he could get back into

[13] In ground B, the Applicant contended that Counsel's conflict precluded Counsel presenting a defense to the admission of the confession based upon allegations of brutality. This Court incorporates its order herein.

general population, that he didn't want anyone else to get into any trouble for something he did.

Q. And after you checked around and found out that he could possibly get back into general population, is that when- -did you communicate that back to him?

A. That's correct. It took some time. He had to call the Charleston Office, they called back, he had to call the jail, they had to look around to see what could be done, and when we finally got the okay, we told him that he could go back into general population.

Q. Okay. And then did he agree to go ahead and go back on tape?

A. That's correct, that's when he agreed, he said he would tell us the truth.

Q. Okay. Other than trying to assist him in getting from the infirmary cell to general population, did you make any other promises to him or did you hear Agent Darnell make any promises to him?

A. No, sir, none.

Q. Did either one of y'all threaten him in any way?

A. No, sir, he never was threatened.

Q. Did you physically abuse him in any way?

A. No, sir.

R. 2314-15.[14]

[14] The dichotomy of claiming on one hand that the statement was the product of physical abuse and on the other hand a product of lenient treatment is obvious to any reasonable observer.

SLED Agent Mears clarified the timing of the inquiry on cross-examination:

> Q. When he first indicated to you by your statement that if he told you the truth would you put him back into the general population, was he told at that time about his rights or was the only time that he was told about his rights was when the tape was turned on and a general statement was made that he had signed some rights earlier?
>
> A. He had signed the rights before the first statement. Then at the end of the first statement is when he stated if he told us the honest truth, if he could get back in the general population and the concerns of the other two ladies.

R. 2318:16-19:2.

At the Denno hearing, Counsel Stone argued about the time gap, "that's all I have to say" and crying when the tape was on after the gap. R. 2324-27. The trial judge determined, under the totality of the circumstances, that the statement was freely and voluntarily given, "without reward, without promise or hope of reward, without promise of leniency... and that such alleged incriminating statement was the voluntary product of the free and unconstrained will of the defendant." R. 2330.

At the trial, Deputy Director Dozier testified that she ordered Mr. Aleksey moved from the maximum security section of the Orangeburg Detention Center to an infirmary cell for his safety. R. 1470. After Mr. Aleksey had requested and seen a SLED agent, Mr. Aleksey was placed in the general population after receiving a call from the SLED agent. R. 1471-72.

Before the jury, Agent Darnell described the circumstances surrounding the statement. R. 1567-1580. He stated that at the conclusion of the first statement, among other things, Mr. Aleksey "asked us if he was truthful with us could get him out into the general prison population.

that he was in the infirmary cell by himself and that he did not want to go back over to the cell by himself." R. 1574. He described seeking information from the various sources. R. 1574-75. After the Detention officials advised that they did not have a problem with it:

> "We advised Mr. Aleksey we could do that, we could place him back in general population, the jail agreed to it. During this time, he started crying...and said he was sorry for what he did...and wanted us to relay to the family that he was sorry for what he had done. Then we advised him that we were going back on the tape...."

R. 1575:5-14; See also R. 1597-99 (Mears) (same).

2. Analysis

To determine the voluntariness of a confession and whether it is subject of coercion, courts commonly look to (1) the location of the questioning, (2) whether Miranda warnings were given, and 93) whether the accused initiated the contact. See Colorado v. Connelly, 479 U.S. 157, 170 (1986). In Connelly, the Court looked to the totality of the circumstances as to whether law enforcement had overborne the will of the accused by (1) the creation of the pressure and (2) the suspect's capacity to resist the pressure. Courts have generally held certain police practices insufficiently coercive to constitute a Fifth Amendment violation: (1) promises of leniency or psychiatric treatment; (2) confrontation of the accused with other evidence of guilt; (3) an interrogator's appeal to the defendant's emotions, and (4) an interrogator's false or misleading statements. See Annual Review of Criminal Procedure, 34 Geo.L.J. Ann.Rev.Crim.Proc., p. 180-81 (2005)(see cases collected, note 590-594). Obtaining testimonial evidence from a defendant by means of physical torture or other physical coercion violates the Constitution. Id.;

see Brown v. Mississippi, 297 U.S. 278, 286-87 (1936) (brutality extracted confession is a Due Process violation).

The Applicant relies upon State v. Peake, 291 S.C. 138, 352 S.E.2d 487 (1987), a case where the promise of leniency to avoid the death penalty if he gave a statement interpreted to require a new trial. Peake was distinguished in State v. Rochester, 301 S.C. 196, 391 S.E.2d 244 (1990) where the court held that a polygraph examiner's statement that it would be in the defendant's best interests to tell the truth was not an inducement or hope of a lighter punishment which the Peake court concluded undermined the will of the defendant.

Peake recognized that "a statement induced by a promise of leniency is involuntary only if so connected with the inducement as to be a consequence of a promise." Here, unlike Peake there was never any promise of a lighter punishment. Second, the inquiry was initiated by Mr. Aleksey, not the police, to see if he could be placed into the general population in Orangeburg and not remain in the infirmary where he had been placed for safety purposes.

Like Rochester, there has been no showing, under the totality of the circumstances that Mr. Aleksey was worn down by improper interrogation tactics such as lengthy questioning, trickery or deceit. Further, there was no showing that the confession was induced by force, psychological or physical, or by direct or implied threats. Standing alone, the requested bargaining by Mr. Aleksey was not for leniency or a lesser sentence.

Counsel cannot be deemed ineffective in failing to pursue the asserted strategy. See Thai v. Mapes, 412 F.3d 970 (8th Cir. 2005) (Counsel not ineffective in failing to assert statement was the product of a promise of leniency where police only asserted they would protect Thai after he expressed fear that members of a group would harm him if he gave a statement which was

neither a promise he would not be prosecuted or as a promise the authorities would be more lenient); Sumpter v. Nix, 863 F.3d 563 (8th Cir. 1988) (promise of treatment for alcoholism does not undermine voluntary statement).

Here, the test was whether Mr. Aleksey's will was overborne and his capacity for self-determination critically impaired. See Columbe v. Connecticut, 367 U.S. 568 (1981). Mr. Aleksey's request to see if he could be moved into the general population, as the Detention Center's agreement to do so, is not the type of coercion that undermines free will.

Here, Mr. Aleksey's statements were entirely self-motivated. To the contrary, the motivating cause of the decision to confess was neither pressures nor an inducement for a lesser sentence.

Counsel Stone admitted at the PCR hearing that he did not argue that the confession may have been induced by a promise to move him from isolation in the infirmary to the general population. PCR R. 891-98. Counsel stated that he believed his best argument was to urge it was a Miranda violation due to the comment that he had no more to say and the gap of two hours. PCR R. 893.

Counsel's strategic decision was not deficient under Strickland, supra. The comments did not promise any lesser sentence or dropping of charges. As such, induced by his own requests to law enforcement, it is difficult to assert that Applicant's will was overborne. Further Sixth Amendment prejudice has not been shown where the Applicant failed to show a reasonable probability the result would have been different if he had raised this objection to the statement. The Applicant has failed in his burden of proof.

In summary, with regards to Ground H, which claims that trial Counsel failed to argue that the Applicant's confession was improperly induced by a promise of leniency or reward, and therefore involuntary, this Court denies the Applicant's request for relief. This Court finds that trial Counsel was not ineffective on this issue. In fact, it appears that the issue of voluntariness was raised in the Jackson v. Denno hearing. However, despite the allegation that a promise that was made, specifically the promise to move Mr. Aleksey into the general population, the trial court determined that, based upon the totality of the circumstances, Mr. Aleksey's confession was voluntarily given. Furthermore, Mr. Stone testified that it was a tactical decision to argue that the confession was violative of Miranda, instead of arguing that the confession was the result of a promise which was improperly induced. This Court is constrained to find that the Applicant has failed to meet his burden that Counsel was ineffective for failure in pursuing the asserted strategy, and further, that Counsel's strategic decision was not deficient under Strickland.

I. **Applicant was denied the effective assistance of Counsel as guaranteed by the Sixth and Fourteenth Amendments and Article 1, Section 14 of the South Carolina Constitution and South Carolina law including S.C. Code Sections 16-3-26(B)(1) and 17-23-60 by Counsels' failure to request a change of venue due to extensive and prejudicial pre-trial publicity involving the offense charged and the Applicant's character and failure to explore this publicity through voir dire. Strickland v. Washington, 466 U.S. 668 (1984).**

IAC and Failure to Move to Change Venue

In his brief, p. 55-62, Mr. Aleksey contends that Counsel were ineffective based upon their failure to seek to have venue changed based upon pretrial publicity. This Court has previously addressed this matter within its response to Ground B. It is incorporated herein by reference.

The Applicant contended that fifty-six (56) potential jurors of the panel of 71 revealed on voir dire that they had heard something about the case and nine (9) indicated that they were not exposed. R. 35-858. He notes that of the thirty-five (35) who were qualified in the panel, thirty-two (32) asserted some exposure to publicity. He asserts that all twelve of the selected jurors revealed some exposure or knowledge about the case. Applicant's Memo., p. 58.

Mr. Aleksey further contends that a review of the articles reveal the nature of the crime and information about Mr. Aleksey's background and motive and varying roles of Mr. Aleksey and Gloryvee Perez Blackwell. The Applicant notes that one juror, Bonnie Zeigler, asserted that she read the paper everyday "because it was big headlines." R. 434.

A motion to change venue is addressed to the sound discretion of the trial judge and will not be disturbed on appeal absent an abuse of discretion. State v. Manning, 329 S.C. 1, 495 S.E.2d 191 (1997) (finding trial court abused discretion by granting State's motion to change venue based on pretrial publicity because no evidentiary facts supported finding of actual juror

prejudice toward State). When a trial judge bases the denial of a motion for a change of venue because of pretrial publicity upon an adequate voir dire examination of the jurors, his decision will not be disturbed absent extraordinary circumstances. State v. Caldwell, 300 S.C. 494, 388 S.E.2d 816 (1990).

When jurors have been exposed to pretrial publicity, a denial of a change of venue is not error when the jurors are found to have the ability to set aside any impressions or opinions and render a verdict based on the evidence presented at trial. State v. Manning, supra. Therefore, mere exposure to pretrial publicity does not automatically disqualify a prospective juror. Id. Instead, the relevant question is not whether the community remembered the case, but whether the jurors had such fixed opinions that they could not judge impartially the guilt of the defendant. Id. It is the defendant's burden to demonstrate actual juror prejudice as a result of such publicity. State v. Caldwell, supra; Sheppard v. State , 357 S.C. 646, 654, 594 S.E.2d 462, 467 (2004) (The nature of the crime, i.e., the killing of a police officer, and the fact that a large percentage of prospective jurors remembered pretrial publicity did not establish actual juror prejudice as result of pretrial publicity, and thus, change in venue was not required); see Hunt v. State, 940 So.2d 1041, 1062-63 (Ala.Crim.App. 2005) (Defendant convicted on three counts of capital murder did not establish that trial Counsel was ineffective for failing to adequately argue for change of venue based on pretrial publicity, in hearing on petition for post-conviction relief, where only evidence that defendant submitted was 25 newspaper articles, some of the articles were published after defendant's trial, and defendant did not introduce the voir dire examination of the prospective jurors nor any statements from any jurors); Walendzinski v. Renico, 354 F.Supp.2d 752 (E.D. Mich. 2005) (To establish ineffective assistance of Counsel for failing to move for a

change of venue due to prejudicial pre-trial publicity, a defendant must show that the trial court would have granted a change of venue motion; this requires a showing of the jury's actual or presumed prejudice); Bishop v. State, 882 So.2d 135 (Miss. 2004) (Counsel's failure to seek change of venue based on pretrial publicity after numerous members of venire stated they had heard about case, or to seek continuance to further assess pretrial publicity, was matter of reasonable trial strategy that did not support claim of ineffective assistance of Counsel, in capital murder trial; jurors who stated they had heard about case also affirmed that they could disregard what they had heard, that they could listen to evidence, and that they could be fair and impartial); State v. Bryan, 101 Ohio St.3d 272, 804 N.E.2d 433 (2004) (Defense Counsel's failure to request a change of venue, due to massive pretrial publicity regarding murder of police officer, was not ineffective assistance of Counsel in capital murder prosecution; defense Counsel questioned jurors about pretrial publicity, each impaneled juror stated that he or she either had not formed an opinion about defendant's guilt or could put aside such an opinion and render a verdict based on the law and evidence presented, and trial court took effective steps to protect defendant's rights, strongly and repeatedly advising jurors not to listen to news broadcasts, read newspapers, or talk to anyone about the case); Busby v. Dretke, 359 F.3d 708 (5th Cir. 2004) (prejudice sufficient to warrant a change of venue could not be presumed by virtue of pretrial press coverage, and therefore petitioner was not entitled to venue change absent proof that jurors were actually biased against him; newspaper, which ran at least a dozen articles on the case, had a paid circulation of approximately 5,500, local weekly paper, which gave the case much less prominent coverage, had a circulation of around 3,500, the two local papers' coverage of the killings was "largely

factual in nature," tracing developments in the case rather than engaging in sensationalism, and coverage tailed off markedly in the months preceding trial).

The Applicant has failed to show the existence of "actual juror prejudice." To the contrary, each juror who sat to decide the Applicant's case revealed their ability to set what they read or heard aside and base the verdict on the evidence. See Jason Cote (R. 241); Sandra McWaters (R. 276-77); Duane Green (R. 321-22); Tyrone Gillard (R. 346-47, 352); Elaine Whetstone (R. 354-55, 358); Norris Gibson (R. 402-03, 406); Debra Sanford (R. 423-24); Bonnie Zeigler (R. 430, 434); Gigi Hayes (R. 453, 458); Kedraine Pelzer (R. 492-93); and Barbara Hanton (R. 550-51). The Applicant has failed to establish any actual juror prejudice where their sworn statements in open court revealed the ability to decide the case based upon the evidence.

Further, defense Counsel Stone and Sims strategically decided not to seek a change of venue based upon their assessment that Orangeburg County was the preferred county to try Mr. Aleksey. See PCR R. 833-37, 839-43, 854, 1151-52, 619-623. These matters were recited in the argument in ground B and are incorporated herein by reference. Simply put, defense Counsel reviewed the publicity, weighed the alternatives and decided not to seek a change of venue. He has failed to show either deficient performance or prejudice under Strickland, supra.

In conclusion, the Applicant's request for relief is denied. Counsel testified that they strategically decided not to seek a change of venue based upon their assessment that Orangeburg County was the preferred county to try the case. Orangeburg County was perceived by Counsel to be a venue where jurors were more suspicious of law enforcement and was positive for criminal defendants. Mr. Aleksey has failed to show deficient performance.

J. Applicant was denied the effective assistance of Counsel as guaranteed by the Sixth and Fourteenth Amendments and Article 1, Section 14 of the South Carolina Constitution and South Carolina law including S.C. Code Sections 16-3-26(B)(1) and 17-23-60 by trial Counsels' decision to imply to the jury, through voir dire questioning, that Applicant was a foreign national. Strickland v. Washington, 466 U.S. 668 (1984).

Inquiry of Jurors About Foreign Nationals - IAC

In ground J, Mr. Aleksey contends Counsel was ineffective in jury selection when he made inquiry on voir dire concerning foreign nationals when Mr. Aleksey was, in fact a U.S. citizen, albeit a descendant of a Russian and a Trinidadian. Applicant's Memo., p. 64-67. The record reveals that during the voir dire of Harry Mims, Counsel Stone asked the following question:

> Q. Do you believe that foreign nationals should have the same rights as non foreign nationals? [as people born here in America]

R. 189:1-2, [R. 189:10-11]. The Solicitor objected that it was a specific hypothetical, but Judge Cottingham permitted it. Subsequently, the trial court inquired why are you concerned about their thoughts on a foreign national. R. 194. Solicitor Bailey noted he was not a foreigner and was born in Manhattan. Id. Counsel Stone explained:

> His name is Bayan Aleksey. He is a descendant of a Russian and Puerto Rican. Although he may very well not be a foreign national, he acts like it, looks like it, and sounds like it.

R. 194. Judge Cottingham allowed the question. R. 194. Of the jurors who ultimately decided Mr. Aleksey's fate, only four were asked the question: Jason Cote (R. 246); Norris Gibson (R. 407); Debra Sanford (R. 427); and Bonnie Ziegler (R. 434-35).[15]

[15] During the voir dire, one venire person, Homer Thrailkill, when asked the question about foreign national stated: "I assume he is a citizen, isn't he?" Mr. Sims responded "we can't get into that but I am asking you this question."

Mr. Aleksey contends that since the state would not be able to suggest that Mr. Aleksey was a foreign national and Counsel's failure to inform the jury that he was a citizen suggests that the defense injected racial and/or nationalistic prejudice into the case. He suggests that this was per se deficient performance by Counsel. Applicant's Memo., p. 65.

Tactical decisions about the manner of voir dire have been upheld by the Fourth Circuit. See Spencer v. Murray, 18 F.3d 229, 233 (4th Cir. 1994), where Counsel elected not to voir dire o racial attitudes; see also Sexton v. French, 163 F.3d 874 (4th Cir. 1998). In Sawyer v. Butler, 848 F.2d 582, 589 (5th Cir. 1988), the Court upheld Counsel's decision not to question jurors about their views on the death penalty where they were questioned by the state, there was no prejudice shown, and no showing of rehabilitation possible. See also Brown v. Jones, 255 F.3d 1273, 1278-79 (10th Cir. 2001) (failure to pursue reverse - Witherspoon voir dire was neither deficient performance or prejudice ineffective).

At the PCR hearing, Duffie Stone stated that Mr. Aleksey was not a foreign national. He denied that he ever asked any juror if they had a bias or prejudice against foreign nationals. Rather, he stated he asked them if they believed they should have the same rights as a natural born citizen. PCR R. 858. He stated he took it off the "federal jury questionnaire." Id. Mr. Stone stated that he found in his federal court experience that the question was a good indication of hidden bias that jurors may have. PCR R. 858. He stated that the question developed an honest response about hidden bias. Mr. Stone stated this was the reason he asks the question. PCR R. 858-59.

He responded: Yes, I have no problem. He is a human being like everybody else. I wouldn't be prejudiced one way or another." R. 342.

Mr. Stone reiterated it was a general voir dire question he asked, but also related to Mr. Aleksey since he looked like a foreigner. PCR R. 859. Mr. Aleksey did not recall if he ever placed into the record that he was a U.S. citizen.[16] Id.

Contrary to the claims of Mr. Aleksey at this time, there was no false or prejudicial information presented by the voir dire. Mr. Aleksey's characterizations in his brief otherwise are not supported by the record.

Nevertheless, Counsel performed reasonably in questioning the jurors on the rights of foreign nationals to develop an understanding of biases on their part. Contrary to the Applicant's claim, the inquiry was not damning to Mr. Aleksey. It is further uncontradicted that the inquiry is a routine part of the federal jury questionnaire.[17] Counsel Sims concurred that the reason for the inquiry was to ferret out potential jurors who may have a bias, not to create a bias against Mr. Aleksey. Mr. Sims stated he agreed with the strategy. PCR R. 620-21. Since the Applicant failed to prove either prejudice or deficient performance, the allegation must be denied.

In conclusion, this Court must find that Counsel's decision was entirely a tactical one. Further, the Court finds that trial Counsel's strategic decision was not deficient under Strickland, and therefore, the Applicants application for PCR would be denied with regards to this issue. Further, even if the Applicant successfully established deficient performance, the Applicant has failed to establish prejudice to which he suffered as a result of the alleged violation. As a result, the Applicant's request for relief as it pertains to Ground J is denied.

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[16] Vera Aleksey testified that Mr. Aleksey was born in 1968 while she was living in N.Y. (R. 2071-72)

[17] See http://www.scd.uscourts.gov/Forms/Jury/Standard_Jury_Questionnaire.pdf. South Carolina District Court Juror Questionnaire.

K. **Applicant was denied the effective assistance of Counsel as guaranteed by the Sixth and Fourteenth Amendments and Article 1, Section 14 of the South Carolina Constitution and South Carolina law including S.C. Code Sections 16-3-26(B)(1) and 17-23-60 by trial Counsels' complete failure to question any member of the jury panel regarding her view of the death penalty. See U.S. v. Cronic, 466 U.S. 648, 659 (1984); Hamilton v. Alabama, 368 U.S. 52, 55 (1961); Frett v. State, 298 S.C. 54, 378 S.E.2d 249 (1988) and S.C. Code Section 16-3-20(D) & (E).**

Failure to Question Voir Dire on Views on the Death Penalty - IAC

In ground K, Mr. Aleksey contends that defense Counsel was ineffective by failing to question any member of the jury panel concerning their views on the death penalty. Applicant's Memo., p. 62-64. He contends that it was an unreasonable strategic decision that fell below the standards of competence demanded of the criminal bar because it bypassed "it mandatory obligation of examining prospective jurors regarding their views on capital punishment." Applicant's Memo., p. 63. This Court finds that the record reveals that the strategic decision to forego the questioning was the product of an informed decision. Further, where the jurors were qualified and questioned by the court on their views on the death penalty, prejudice has not been shown.

A review of the voir dire of the actual panel selected revealed each member was questioned about their views on the death penalty. Juror Cote revealed that he was a "number 3" type juror. R. 242. Cote indicated, upon the Solicitor's questioning, that he sometimes feels it is appropriate and "there is a lot of cases that I feel it's just not appropriate and they find it's not appropriate." R. 243. Contrary to the claim in the Application, the record reveals that Counsel Sims asked Cote to confirm that he had said he had heard of situations where he did not think the death penalty was warranted. R. 245.

Juror Sandra McWaters also revealed she was a number 3 juror. R. 278. Again, the solicitor specifically asked about whether she had thought about the death penalty before and declared her willingness to consider it but "I could only do it if I heard the facts..." R. 281. Counsel Stone stated to the juror that the Solicitor had asked a lot of questions about the death penalty, I am not too concerned about that, what I want to ask you is about guilt and innocence..." R. 282. Mr. Stone did not ask any specific questions about the death penalty. R. 281-85.

Juror Duane Green opined to the court that he was in the third group ("I can or cannot depending on the facts"). R. 318. Solicitor Bailey made inquiry about the death penalty. R. 319-20. Counsel Sims asked questions about media exposure and bias. but not about the penalty. R. 321-22.

Juror Tyrone Gilliard opined upon the court's questions that he was in the third group. R. 348-39. Solicitor Bailey made follow-up inquiry about the response. R. 349-50. Counsel Stone inquired about prior jury service, the seriousness of the case and whether the juror could vote not guilty if the state did not prove its case. R. 351-52.

Juror Elaine Whetstone indicated she would be in group three. R. 355. Solicitor Bailey confirmed her response about being a number three juror. R. 357. Counsel Stone inquired about media attention, the seriousness of the case, a willingness to give a not guilty verdict and a bias question related to men and women. R. 358-59.

Juror Norris Gibson stated to the court he was in the third group. R. 403-04. Upon Solicitor Bailey's questions, Gibson asserted that he had not discussed or thought about the death penalty before. R. 404. The solicitor focused on determining that if the case was bad enough

whether he could vote for death. R. 404-06. Counsel Sims inquired about media, his opinion about the case, whether women should be held to the same standard as men, bumper stickers on his car, and the aforementioned foreign national question. R. 406-07.

Juror Debra Sanford declared she was a number three juror. R. 424. Solicitor Bailey inquired about the death penalty and she responded that "if [the facts] were bad enough, I could." R. 425. Defense Counsel Sims inquired about whether she had formed any opinion based upon TV coverage, as well as the foreign nationals, women, and bumper sticker questions.

Juror Bonnie Zeigler opined that she was in the third group and willing to listen to the evidence before deciding the sentence. Solicitor Bailey asked if the facts were bad enough, could she sentence a person to death. R. 431. Counsel Sims made similar inquiry as he had with other jurors about whether she had formed an opinion based upon media, and the trio of questions about women, foreign nationals, and bumper stickers. R. 434-35.

Juror Gigi Hayes declared that she had not formed an opinion and was in the third group. R. 454. Solicitor Bailey inquired about her ability to vote for a death penalty. R. 454-56. Counsel Stone inquired about the impact her husband who is a military policeman would cause in the case involving the death of a police officer. R. 457. Mr. Stone inquired on whether the death penalty questioning made her feel that Mr. Aleksey was automatically guilty and followed up with inquiry about whether she would find a person not guilty. R. 457-59. Mr. Stone then asked media questions, a well as whether she held women to the same standard as men. R. 458.

Juror Kedrain Pelzer stated that he was in the third group also. R. 493. He said he would "give the person a chance, ...hear the facts and whatever before really saying they were guilty." R. 493. As to the death penalty, he said he would "hear everything and then decide." R. 494.

Solicitor Bailey inquired of Pelzer about his knowledge of Counsel Sims and Patti Rhett of his office. He declared that he could vote for death if the facts were bad enough. R. 496. Counsel Stone inquired his similar question about whether he could find a person not guilty if the state did not prove its case, even a big case where someone was killed. R. 498-99. He closed with his women bias question. R. 498.

Juror Barbara Hanton asserted she was a third type juror. R. 552. Solicitor Bailey inquired of whether she could give the death penalty, if it was bad enough. R. 554. She declared she had "never, never" thought about the death penalty before but could deal with it. R. 555. Counsel Sims inquired about the media exposure and whether she could find him not guilty if the state did not meet its burden. R. 557.

Juror Narone Franklin also declared he was a third type juror. R. 234. Solicitor Bailey inquired as to whether he could vote and sign his name for the death sentence. R. 235-36. Counsel Sims inquired as to whether he could find a defendant not guilty, about his exposure to talk and media about the case and the bumper sticker question. R. 237-38.

The record reveals that there were jurors the defense team did ask questions during voir dire concerning other venire persons opinions about the death penalty. Butler (R. 257:16-24); Ryant (R. 270:18-271:8); Sabrina Robinson (R. 305-06) (Solicitor Bailey states not qualified despite Mr. Sims' "Herculian efforts"); Goodwin (R. 450-51) (Mr. Stone: "I thought I had him, ...it came close for a second").

During the PCR hearing, Counsel Sims stated that there was a decision made with Mr. Stone to not specifically ask questions about the death penalty beliefs of the jurors. PCR R. 621. He stated the trial judge was advised of this position. PCR R. 621; see R. 177-79.[18]

Mr. Sims stated the judge asked each juror about what position the jurors fit in: whether they were always in favor of death, always in favor of life, or would consider all the evidence before they would make a decision. PCR R. 622.

Mr. Sims stated, concerning rehabilitating jurors, that there were some given their adamant responses the defense felt it would be useless to try to rehabilitate. PCR R. 623.

Counsel Sims asserted that he was aware that the defense had an absolute right to ask jurors their view on the death penalty. PCR R. 87.[19]

Counsel Stone stated that his reasoning in not pursuing this inquiry of jurors' views on the death penalty after the court's inquiry was based upon his own experience. PCR R. 861. He stated that while a law clerk, he sat through a jury qualification where the court, prosecutor and defense spent their voir dire time talking about the penalty. Id. Mr. Stone stated that he was struck at how a juror, without knowledge of any guilt, was exposed to the questions where everyone, especially the defense talks about penalty and presupposes the guilt of the defendant. PCR R. 861. Although he did not know if studies backed him up, in his discussions with other criminal defense attorneys the concept of "residual doubt" of guilt is the best way to get a life

[18] The trial record reveals before the beginning of voir dire, Counsel Stone indicated that the only reference to the penalty should be the questionnaire with the three types of jurors. R. 178. "The defense is specifically not going to ask them any questions concerning their feeling on the death penalty although we have a statutory right to do so."

[19] On direct by Mr. Brown, Mr. Sims asserted that the defense always asked question about the jurors' beliefs, until his recollection was refreshed with the record. PCR R. 87-90.

sentence. PCR R. 862. Mr. Stone expressed the inquiry is difficult for the jurors without presupposing guilt. PCR R. 862.

Mr. Stone stated he wanted their voir dire efforts to focus on the jury understanding that they did not think he was guilty and try to carry that residual doubt, if convicted, into the penalty phase. PCR R. 862. Mr. Stone noted that Solicitor Bailey objected because, Mr. Stone speculated, he wanted the defense to talk about penalty as much as possible.[20]

Mr. Stone stated that the only exception would have been where certain jurors who asserted they would never give the death penalty, he might go in and talk about the penalty in hopes to have them qualified so the solicitor would use a strike. PCR R. 863.

Mr. Stone noted that this might appear inconsistent, but his general idea was to make sure that we did not presuppose guilt. PCR R. 863. Mr. Stone stated that after listening to the judge and responses to the solicitor's questions, he had a pretty good idea that they did not need to also ask questions about penalty. PCR R. 863. Mr. Stone acknowledged that this was his theory that he sold to Mr. Sims. PCR R. 864.

Mr. Stone felt he received about the same information from listening to the response to others questions. He noted that it was how they answered. Mr. Stone clarified that he wanted to keep the concept of "residual doubt" in the jurors' minds if they got to sentencing. PCR R. 865-67.

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[20] Stone's fears about death qualification and conviction - prone jurors is shared by others in the legal community. See "Qualified to Convict...", 22 Q.L.R. 359 (2003); see also State v. Griffin, 251 Conn. 671, 741 A.2d 913 (1999) (citing Jurow, New Data on the Effect of a "Death- Qualified" Jury on the Guilt Determination Process, 84 Harv. L. Rev. 567 (1971); Oberer, Does Disqualification of Jurors for Scruples Against Capital Punishment Constitute Denial of Fair Trial on Issue of Guilt?, 39 Tex. L. Rev. 545, 547-48 (1961)).

Analysis

As stated previously in Ground J, questions ask on voir dire generally fall within the concept of strategic decisions. An attorney's actions during voir dire are considered to be a matter of trial strategy and as such, cannot be the basis for a claim of ineffective assistance of Counsel unless Counsel's tactics are shown to be "so ill chosen that it permeates the entire trial with obvious unfairness". Burns v. State , 813 So.2d 668, 675-76 ¶ 22 (Miss. 2002) (citing Teague v. Scott, 60 F.3d 1167, 1172 (5th Cir. 1995)); see also Garland v. Maggio, 717 F.2d 199, 206 (5th Cir.1983). Courts "will not second-guess trial strategy decisions such as those made in voir dire." State v. Cornwell, 86 Ohio St.3d 560, 569, 715 N.E.2d 1144 (1999) (citing State v. Mason, 82 Ohio St.3d 144, 157, 694 N.E.2d 932 (1998)). In a capital case in South Carolina, the defendant has a right to voir dire the potential jurors. S.C. Code Ann., § 16-3-20(D). However, it has been held that a defendant may waive his statutory right to voir dire. State v. Norris, 285 S.C. 86, 328 S.E.2d 339 (1985). In State v. Smart, 278 S.C. 515, 299 S.E.2d 686 (1982), the Court clarified that the purpose of statutory voir dire by Counsel was not to develop a personality profile, but to determine specific and real bias. In State v. South, 285 S.C. 529, 331 S.E.2d 775 (1985), the Court held it was appropriate to ask whether a juror could vote for either life or death. In Morgan v. Illinois, 504 U.S. 719 (1992), the Court held that upon a defendant's request, a judge is required in voir dire to conduct a direct inquiry into the views of the venire persons concerning capital punishment. See also Yeatts v. Angelone, 116 F.3d 255, 265-66 (4th Cir. 1999); Boggs v. Bair, 892 F.2d 1193, 1201 (4th Cir. 1989) (trial judge not required to rehabilitate by his personal questions jurors who could not put aside beliefs). The 11th Circuit decision in Brown v. Jones, 255 F.3d 1273, 1279 (11th Cir. 2001) is very persuasive:

...McDonald was not asked any questions during the Rule 20 hearing regarding his failure to engage in a reverse - Witherspoon inquiry. Although during voir dire the trial judge asked the potential jurors a few questions to determine whether any of them was unalterably opposed to the death penalty, this questioning was limited. Thus, McDonald may well have thought it better to avoid any focus on the death penalty. McDonald's decision not to ask potential jurors whether they would automatically vote to impose the death penalty if Brown were convicted of capital murder appears to have been a reasonable tactical decision, because it seems reasonable for trial Counsel to want to focus the jury on the idea of the death penalty as little as possible. Moreover, there is a strong presumption that McDonald's actions were the result of sound trial strategy. See Strickland, 466 U.S. at 689, 104 S.Ct. at 2065. Nevertheless, we need not decide whether Brown failed to establish the performance prong on this claim, because we conclude that he failed to establish the prejudice prong.

2. Prejudice Prong

In order to establish the prejudice prong, Brown would have to show that, but for McDonald's failure to engage in the reverse - Witherspoon inquiry during voir dire, the result of his trial would have been different. See Strickland, 466 U.S. at 694, 104 S.Ct. at 2068. For several reasons we conclude that Brown has failed to make the required showing. First, during the penalty phase of the trial, the trial judge instructed the jurors that their verdict should be based on the evidence and the law and that there was no room for passion, prejudice, or other arbitrary factors. Brown argues that we should presume that some of the jurors were biased in favor of the death penalty and would have refused to follow the law. We have stated in numerous cases, however, that jurors are presumed to follow the court's instructions. See, e.g., Ingram v. Zant, 26 F.3d 1047, 1053 (11th Cir.1994) ("Because we presume that jurors follow such instructions, we must assume that the jury put aside any biases it may have had, applied the legal standards as enunciated in the jury instructions, and based its sentencing decision on the facts introduced at trial and sentencing."); Raulerson v. Wainwright, 753 F.2d 869, 876 (11th Cir.1985) ("Jurors are presumed to follow the law as they are instructed."). Because we presume that the jurors followed the court's instructions to base their sentencing decision on the evidence and the law, and not on arbitrary factors, Brown's attempt to prove prejudice is undermined. See Stamper v. Muncie, 944

> F.2d 170, 177 (4th Cir.1991) (holding that petitioner, who alleged ineffective assistance based on Counsel's failure to "explore with certain members of the venire the 'reverse - Witherspoon' inquiry," failed "to demonstrate how any shortcoming on trial Counsel's part constituted prejudice sufficient to satisfy the second prong of the Strickland test"). Second, Brown failed to adduce any evidence that any juror was biased in favor of the death penalty. Third, the heinous nature of the crime and the absence of any mitigating factors make this a case in which the prosecutor had a strong case for the death penalty. For these reasons, we conclude that Brown has failed to show that McDonald's decision not to engage in the reverse - Witherspoon inquiry with the jury resulted in prejudice sufficient to satisfy the second prong of Strickland .

Id. (footnote omitted).

This Court concludes that deficient performance has not been shown. Counsel Stone's concerns about conviction - proneness of a jury in the nature of questioning was not unreasonable. Further, as revealed in the review of the voir dire of the other potential jurors, Counsel revised the strategy when jurors indicated a potential for rehabilitation from being a Witherspoon excludable. Importantly, this was not abdication of voir dire by the defense, as the Applicant now suggests, but an informed strategy based upon the responses given by the venireman to the judge and the prosecution to develop the least "conviction-prone " juror and implicitly assert their defense strategy the guilt was still at issue. This Court finds that this was a legitimate trial strategy. See McLaughlin v. State, 352 S.C. 476, 483-484, 575 S.E.2d 841, 844-845 (2003) (holding that where Counsel articulates a valid reason for employing a certain trial strategy, such conduct will not be deemed ineffective assistance of Counsel.) The claim must be dismissed.

Even if deficient performance was found, prejudice under Strickland has not been proven. As set out above, the voir dire of the jurors who actual sat in the trial revealed unquestionable

qualification to sit. Like Jones, during the penalty phase of the trial, the trial judge instructed the jurors that their verdict should be based on the evidence and the law and that there was no room for passion, prejudice, or other arbitrary factors. R. 2166-67. Mr. Aleksey may be asserting that we should presume that some of the jurors were biased in favor of the death penalty and would have refused to follow the law. Courts have stated in numerous cases, however, that jurors are presumed to follow the court's instructions. See e.g., Ingram v. Zant, 26 F.3d 1047, 1053 (11th Cir. 1994) ("Because we presume that jurors follow such instructions, we must assume that the jury put aside any biases it may have had, applied the legal standards as enunciated in the jury instructions, and based its sentencing decision on the facts introduced at trial and sentencing."); Raulerson v. Wainwright, 753 F.2d 869, 876 (11th Cir. 1985) ("Jurors are presumed to follow the law as they are instructed."). Because it must be presumed that the jurors followed the court's instructions to base their sentencing decision on the evidence and the law, and not on arbitrary factors, Mr. Aleksey's speculative attempt to prove prejudice is undermined. See Stamper v. Muncie, 944 F.2d 170, 177 (4th Cir. 1991) (holding that petitioner, who alleged ineffective assistance based on Counsel's failure to "explore with certain members of the venire the 'reverse - Witherspoon' inquiry," failed "to demonstrate how any shortcoming on trial Counsel's part constituted prejudice sufficient to satisfy the second prong of the Strickland test"). Further, Mr. Aleksey failed to adduce any evidence that any seated juror was biased in favor of the death penalty. Third, the heinous nature of the crime and the absence of any convincing mitigating factors make this a case in which the prosecutor had a strong case for the death penalty. For these reasons, Mr. Aleksey has failed to prove the existence of prejudice as defined in Strickland and Wiggins.

This Court denies the Applicant's request for relief. In this instance, the Applicant claims that Counsel was ineffective for their failure to question members of the jury panel about their views of the death penalty. This Court finds the Applicant has failed to prove this ground or assuming arguendo deficient performance, any prejudice that resulted from Counsel's tactical decision for the following two reasons. First, in South Carolina, there is a Judge-Directed Death Penalty Qualification Voir Dire, and thus, the jury panel is in fact examined in regards to their respective views of the death penalty, and further, this Court finds that the Applicant's trial Counsel did indeed question jurors about their views of the death penalty (see Examination by Mr. Sims at Record 555, 235, 257, 270, 305, 450). Therefore, the Applicant's basis for relief is without merit. However, even if the Applicant successfully met this burden, the Applicant failed to establish the prejudice that he suffered as a result of the violation. Relief on this basis is denied.

L. Applicant was denied the effective assistance of Counsel as guaranteed by the Sixth and Fourteenth Amendments and Article 1, Section 14 of the South Carolina Constitution and South Carolina law including S.C. Code Sections 16-3-26(B)(1) and 17-23-60 by trial Counsels' failure to attempt to rehabilitate any jurors who indicated in voir dire that they could only vote for life in a death penalty case. Strickland v. Washington, 466 U.S. 668 (1984) and S.C. Code Section 16-3-20(D)&(E). (ABANDONED IN THIRD AMENDED APPLICATION AND POST- HEARING BRIEF).

IAC and Failure to Rehabilitate Life-Only Jurors on Voir Dire

In this allegation, Mr. Aleksey contended that Counsel failed to attempt to rehabilitate jurors who had indicated their belief that life was the only sentence they would consider. In the opening statement, Counsel contended that voir dire was inadequate. In his third amended

application, he stated that he abandoned this issue. Therefore, it must be dismissed due to lack of prosecution with prejudice. Accord Crestwood Golf Club, Inc. v. Potter, 328 S.C. 201, 493 S.E.2d 826 (1977) (court has inherent power to dismiss based upon failure to prosecute). See S.C. Rules of Civil Procedure, Rule 41(2); 41(b) (dismissed with prejudice for failure to prosecute).

M. Applicant was denied the effective assistance of Counsel guaranteed by the Sixth and Fourteenth Amendments and Article 1, Section 14 of the South Carolina Constitution and South Carolina law including S.C. Code Sections 16-3-26(B)(1) and 17-23-60 by trial Counsels' failure to exercise peremptory strikes and challenge for cause during jury selection. Strickland v. Washington, 466 U.S. 668 (1984).

IAC and Failure to Use Peremptory Challenge to Strike Juror 144

In ground M, the Applicant contends that he should have used an available peremptory challenge against black female juror 144. Applicant's Memo., p. 68-71. Particularly, in his brief he contends that defense Counsel were aware that juror 144 knew the victim, was a leader, and her husband was in law enforcement. This Court concludes that Counsel has failed to prove either deficient performance in failing to use a peremptory strike for a qualified juror or Sixth Amendment prejudice under Strickland.

1. Voir Dire of Juror 144

The voir dire of Juror 144 is set out at R. 451-460. Revealed on individual voir dire was the fact that she was employed at Family Health Center as Assistant Director and that her husband had previously been employed as a military policeman with the United States Marine Corps. R. 452-53. She advised the judge that while she had read, heard, and seen TV coverage about the case, she had not formed an opinion. R. 453. She classified herself as a number three

(qualified) juror. R. 454. The solicitor's questions to juror 144 were consistent with that assertion. R. 454-56.

Counsel Stone inquired about whether the fact her husband had been a military policeman cause problems since this case involved the death of a police officer. R. 457. As set out above previously, the other inquiry was consistent with Counsel Stone's voir dire strategy. R. 457-59.

During the general voir dire, the potential jurors were asked if "any of you related by blood or marriage to the deceased, Sergeant F. L. Lingard, or do any of you have any close personal relationships with him or his family?" R. 149-50. There was no response to the question.

2. PCR Testimony of Mr. Stone and Mr. Sims

During the PCR hearing, Counsel Thomas Sims testified that when juror 144 was selected as a juror he had six peremptory strikes remaining. PCR R. 95. He identified his trial notes [Applicant's Exhibit 1] which included information about juror 144 including "leader" "Judge – looking directly at the judge, 3rd group", "Walter – leaning toward Walter; not any hardship", "Duffie – Briefly looked at def. Saw News", "No, "possibly knows the deceased talk with Charles." Applicant's Exhibit 1, PCR R. 97-98. Mr. Sims stated that "Charles" was Dr. Charles Kilgore, Mr. Sims' child's pediatrician. Mr. Sims stated he called Dr. Kilgore, with whom juror 144 worked at Family Health Center, and received an assessment who she was and what she was all about. PCR R. 99. He said, based upon this conversation, "she would have been a good person." PCR R. 99. This was interpreted that Juror 144 would be a good juror. Applicant's Memo., p. 68.

Mr. Sims stated that he thought that Juror 144 was either divorced or separated from her husband, the former military policeman. Mr. Sims, contrary to the claim, did not recall that Juror 144 knew Sergeant Lingard, although he thought Mr. Stone had written it. PCR R. 101.

Mr. Stone testified that he had identified his contemporaneous trial notes and the section "Gigi Scoville-Hayes" PCR R. 868, Applicant's Exhibit 61.[21] Mr. Stone stated that his comment about "leader" meant if she gets on the jury she is a leader and affirmed that is a person who steers people to her view of the case. PCR R. 869. Counsel Stone could not recall where he developed information that Juror 144 knew the victim. PCR R. 871-72. However, he did recall that Mr. Sims contacted someone who knew her who advised him that "she would not be a bad juror." PCR R. 871.

Mr. Stone clarified that he did not think they had information that she did not know Sergeant Lingard and thought she knew him. PCR R. 871-72. However, he could not recall why they may have thought that, particularly when it was not presented at trial. PCR R. 872. However, Mr. Stone declared "I just remember Mr. Sims talking to someone that she worked for or with and coming back saying that she would be a good juror." PCR R. 872. He noted that the scratched out mark before Juror 144 's name on his notes was the number of strikes, but he scratched it out after he talked to Mr. Sims. He stated this was based upon their information that she would be a good juror. PCR R. 872-74. After he spoke with Mr. Sims about the juror after he made the telephone call, Mr. Stone said he change his own mind from a strike to conclude she

[21] In Applicant's Exhibit 61, the notes are "husband - military police get rid of." "leader." "Family Health Center." "knows injured."

would be a good juror, even if she knew the victim. PCR R. 873-74. Even though strikes were available, he chose not to use them. Id.

On cross-examination, Mr. Stone emphasized the reason the strike was not used on Juror 144 was because "Mr. Sims told me that he thought she would be good." PCR R. 1161. He said based upon Mr. Sims knowledge about Orangeburg, he deferred to him on this matter: PCR R. 1162-63.

Mr. Stone recognized that his impression that Juror 144 knew the victim was of concern, but based upon information from someone who actually knew her, not just the two lawyers discussing it, gave them adequate assurance to pick this juror, despite his initial reservations. PCR R. 1163.

Analysis

The South Carolina Supreme Court has held that the mere fact that person is friend or acquaintance of victim does not render him or her incompetent as juror in homicide trial. State v. Jones, 298 S.C. 118, 378 S.E.2d 594(1989); see also State v. Clark, 340 So.2d 208, 215 (La. 1976) (Even where a prospective juror knows a victim of the offense, the defense must show the juror's acquaintance with the victim is such that it is reasonable to conclude it would influence the juror in arriving at a verdict to warrant a cause challenge). The fact that a prospective juror knew the victim or the victim's family does not automatically disqualify the prospective juror for cause. Harris v. State, 632 So.2d 503, 521 (Ala.Crim.App. 1992), aff'd, 632 So.2d 543 (Ala.1993), aff'd, 513 U.S. 504, 115 S.Ct. 1031, 130 L.Ed.2d 1004 (1995). Unless the prospective juror indicates on voir dire that his or her relationship with the victim would prevent

him or her from being fair and impartial, a challenge for cause should be denied. Dunning v. State, 659 So.2d 995, 997 (Ala.Crim.App. 1994).

Counsel who has failed to exercise a peremptory challenge has been found to be ineffective. Johnson v. Armontrout, 961 F.2d 748, 754-755 (8th Cir. 1992). However, prejudice is required or a negative effect on the outcome. Paradis v. Arave, 954 F.2d 1483, 1491 (9th Cir. 1992), vacated on other grounds, 507 U.S. 1026, 113 S.Ct. 1837, 123 L.Ed.2d 463 (1993), opinion on remand 20 F.3d 950 (9th Cir. 1994); see also U.S. v. Taylor, 832 F.2d 1187, 1195 (10th Cir. 1987). In Denham v. Deeds, 954 F.2d 1501, 1505 (9th Cir. 1992), the Ninth Circuit observed that a juror could have been challenged, but ineffectiveness was not shown where the juror nevertheless could be fair and the decision could in some way be tactical. See also U.S. v. Quintero-Barraza, 57 F.3d 836, 841 (9th Cir. 1995) (finding no ineffectiveness in failing to strike a facially biased juror where the decision was manifestly tactical and where due respect was paid to the juror's oath); Heath v. Jones, 941 F.2d 1126, 1136 (11th Cir. 1991) (juror could be fair and follow the law); Butler v. State, 872 S.W.2d 227 (Tex Crim. App. 1994) (Failure of defendant's Counsel to use peremptory challenge against prospective juror in capital murder trial did not constitute ineffective assistance of Counsel; although prospective juror stated that she knew members of family of victim of violent crime, thought defendant in that case deserved death penalty, and felt "very strong" about death penalty, she never stated she had predisposition in favor of death penalty, and her answers showed she was willing to set aside her feelings regarding crime committed against family friend); Stead v. U.S., 67 F.Supp.2d 1064 (D.S.D. 1999) (Counsel for murder defendant was not ineffective in failing to exercise peremptory strike against prospective juror who stated during voir dire that he knew both victim, and victim's son,

where juror's connection with victim was remote, juror made it clear that he could be a fair and impartial juror, and juror was last remaining American Indian on panel, whose presence on jury could have been of benefit to defendant, who was also an American Indian).

This Court finds the Applicant has failed to prove deficient performance as defined in Strickland. First, Applicant failed to prove the factual predicate to his claim - that juror 144 knew the victim. As set out above, at the general voir dire, Juror 144 did not respond positively to an inquiry on whether she had any "close personal relationship with [Sergeant Lingard] or his family." R. 149-50. Second, Counsel Sims notes state "possibly knows the deceased." Applicant's Exhibit 1. Further, Mr. Sims stated that he did not know if she knew Sergeant Lingard and thought Mr. Stone had written it. Mr. Stone, on the other hand, thought he had received the information that Juror 144 knew the victim which apparently prompted Mr. Sims to check with Dr. Kilgore about the juror. Mr. Stone thought he learned about the alleged relationship from the trial proceedings, but the trial record is devoid of any reference to any knowledge of such a friendship - and suggests the opposite by the voir dire response.

However, even assuming the defense believed Juror 144 knew the victim, the strategic decision not to use a peremptory challenge on her was a reasonable trial strategy. It is uncontradicted that pursuant to Mr. Sims's investigation of the juror, he believed from the information he received from Dr. Kilgore that she would be a good juror. Dr. Kilgore had a business relationship with Mr. Sims as his child's pediatrician and Juror 144 worked with Dr. Kilgore. Counsel could reasonably base his opinion to strike or not strike on this independent information.

In his brief, the Applicant suggests that the decision to retain Juror 144 as a juror was delegated to Dr. Kilgore, who did not possess information about her friendship/knowledge of Sergeant Lingard or her husband's employment as a law enforcement officer. Applicant's Memo., p. 69. There is nothing in the record to support this alleged lack of knowledge on Dr. Kilgore's part - particularly when the suggestion made at the hearing was that the contact was made based upon Counsel's expectation that Dr. Kilgore would likely possess this knowledge about the co-worker stated in the "possibly knows the deceased talk to Charles," reference in his notes.

More importantly, there is no assertion by either Mr. Sims or Mr. Stone that the choice of this juror was turned over to Dr. Kilgore. Only, that with the additional information, she turned into a "good juror" in the eyes of the defense team. At all times, however, she was a "qualified" juror.

Turning this decision around, assuming arguendo that Juror 144 would have struck, with the independent information from a source that had a close working relationship with the potential juror and defense Counsel, aware that it was a death penalty case and involved the death of a police officer, opine that she would be a "good juror for the defense", from the favorable Orangeburg community; i.e., suspicious of law enforcement and the "best place to try death penalty case", would the defense's performance be reasonably competent in striking this juror from the panel where only one vote would be needed for a life sentence. See Wiggins v. Smith, supra. As suggested by the Applicant in these proceedings, such tactical decisions are not tactical, at all, but error *per se*. However, he ignores the realities of the responses, demeanor, and multiple factors which Counsel had in making their decision. What is extraordinary, but not

recognized by Mr. Aleksey, in hindsight, is that Juror 144 may in fact have been the best juror for the defense. Mr. Aleksey has failed to show otherwise by the speculative understanding that the juror "knew" Sergeant Lingard or the husband being a former military policeman. Those factors do not mandate discretionary exclusion when faced with favorable information.

Further, as noted in the earlier section, prejudice under Strickland has not been shown. The reasons set forth in ground L, the claim must be denied on this alternative basis. As Mr. Sims and Mr. Stone stated, they were very satisfied with the jury that they had selected. PCR R. 624. The Applicant has failed in his burden of proof as to ground M.

In summary, the Applicant claims that he was denied effective assistance of Counsel as a result of trial Counsel's failure to use a peremptory challenge against Juror No. 144. This Court finds that Counsel exercised strategic decision-making in deciding not to use a peremptory strike on Juror No. 144, as they determined that Juror No. 144 would be a good juror for their panel, based upon Counsel's investigation. This Court would therefore find that the Applicant has failed to prove deficient performance as defined in Strickland. As a result, this Court denies the Applicant's request for relief with regards to this Ground.

N. Applicant was denied the effective assistance of Counsel guaranteed by the Sixth and Fourteenth Amendments and Article 1, Section 14 of the South Carolina Constitution and South Carolina law including S.C. Code Sections 16-3-26(B)(1) and 17-23-60 by trial Counsels' failure to object to the trial court's appointment of SLED Agent Buster Edwards to the position of supervisor of the sequestered jury panel. Strickland v. Washington, 466 U.S. 668 (1984). [ABANDONED IN THIRD APPLICATION AND BRIEF

IAC and SLED Agent Buster Edwards as Supervisor of Jury Panel Sequestration.

In allegation N, Mr. Aleksey contended that he received ineffective assistance of Counsel when SLED Agent Buster Edwards was assigned to be the supervisor over the other bailiffs in handling the sequestered jury and their transportation. See R. 859-862. His complaint derived from the fact Edwards had signed discharge papers when Mr. Aleksey was released from the hospital, served the actual arrest warrant on him, and was involved in the transportation of him from the hospital to the Law Enforcement Center. In his third amended application, he stated that he abandoned this issue. Therefore, it must be dismissed due to lack of prosecution with prejudice. Accord Crestwood Golf Club, Inc. v. Potter, 328 S.C. 201, 493 S.E.2d 826 (1977) (court has inherent power to dismiss based upon failure to prosecute); see S.C. Rules of Civil Procedure, Rule 41(2); 41(b) (dismissed with prejudice for failure to prosecute).

S. Applicant was denied the effective assistance of Counsel guaranteed by the Sixth and Fourteenth Amendments and Article 1, Section 14 of the South Carolina Constitution and South Carolina law including S.C. Code Sections 16-3-26(B)(1) and 17-23-60 by appellate Counsel's failure to argue on direct appeal that trial Counsel's actual conflict of interest was so serious as to be unwaivable. Strickland v. Washington, 466 U.S. 668 (1984) and United States v. Schwarz, et al., 283 F.3d 76 (2d Cir. 2002).

Ineffective Appellate Counsel and Unwaivable Conflict of Interest Issue

In his ground S, Applicant contends that his appellate Counsel, Robert M. Dudek of the South Carolina Office of Appellate Defense erred in performing ineffectively in failing to raise before the South Carolina Supreme Court in the direct appeal that trial Counsel's conflict of interest was unwaivable. This Court concludes the Ground must be rejected because deficient performance has not been proven. A PCR applicant has the burden of proving that appellate

Counsel's performance was deficient. Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003); Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999). A defendant is constitutionally entitled to the effective assistance of appellate Counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985); Thrift v. State, 302 S.C. 535, 397 S.E.2d 523 (1990); Tisdale v. State, 357 S.C. 474, 475, 594 S.E.2d 166, 167 (2004); Southerland v. State, 337 S.C. 610, 615, 524 S.E.2d 833, 836 (1999).

The proper standard for assessing a claim of ineffectiveness of appellate Counsel is that set forth in Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Smith v. Robbins, 528 U.S. 259, 285, 120 S.Ct. 746, 145 L.Ed.2d 756 (2000) (following Smith v. Murray, 477 U.S. 527, 535-36, 106 S.Ct. 2661, 91 L.Ed.2d 434 (1986)). The petitioner must show both (1) constitutionally deficient performance, by demonstrating that his Counsel's conduct was objectively unreasonable, and (2) resulting prejudice, by demonstrating a reasonable probability that, but for Counsel's unprofessional error(s), the result of the proceeding – in this case the appeal – would have been different. Id. at 285 (applying Strickland).

Although appellate Counsel is required to provide effective assistance of Counsel, "appellate Counsel is not required to raise every nonfrivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990) (citing Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308, 77 L.Ed.2d 987 (1983) (emphasis supplied)). "For judges to second – guess reasonable professional judgments and impose on ... Counsel a duty to raise every 'colorable' claim suggested by a client would disserve the very goal of vigorous and effective advocacy...." Jones, 463 U.S. at 754, 103 S.Ct. 3308. Furthermore, to render effective assistance, an attorney is not required to raise every conceivable constitutional claim available at

trial and on appeal. Holladay v. State, 629 So.2d 673 (Ala.Cr.App. 1992); McCoy v. Lynaugh, 874 F.2d 954, 965-66 (5th Cir. 1989). Rather, Counsel must be given some discretion in determining which claims possibly have merit, and thus a better chance of success, and which claims do not have merit, and thus have little chance of success. Smith v. Murray, 477 U.S. 527, 106 S.Ct. 2661, 91 L.Ed.2d 434 (1986); Engle v. Isaac, 456 U.S. 107, 102 S.Ct. 1558, 71 L.Ed.2d 783 (1982); Davis v. State, 720 So.2d 1006, 1014 (Ala.Crim.App. 1998).

> [E]xperienced advocates have emphasized the importance of winnowing out weaker arguments on appeal and focusing on one central issue if possible, or at most on a few key issues. Selecting the most promising issues for review has assumed a greater importance in an era when the time for oral argument is strictly limited in most courts and when page limits on briefs are widely imposed.

Jones v. Barnes, 463 U.S. 745, 746, 103 S.Ct. 3308, 77 L.Ed.2d 987 (1983). [22]

In applying the [Strickland] test to claims of ineffective assistance of Counsel on appeal the reviewing courts must accord appellate Counsel the "presumption that he decided which issues were most likely to afford relief on appeal." Pruett v. Thompson, 996 F.2d 1560, 1568 (4th Cir.1993); see also Smith v. South Carolina, 882 F.2d 895, 899 (4th Cir. 1989). Indeed, "'winnowing out weaker arguments on appeal and focusing on' those more likely to prevail, far from being evidence of incompetence, is the hallmark of effective appellate advocacy." Smith v.

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[22] The purpose of ineffectiveness review is not to grade Counsel's performance. See Strickland, 104 S.Ct. at 2065; see also White v. Singletary, 972 F.2d 1218, 1221 (11th Cir. 1992) ('We are not interested in grading lawyers' performances; we are interested in whether the adversarial process at trial, in fact, worked adequately.'). Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another. Strickland, 104 S.Ct. at 2067. Different lawyers have different gifts; this fact, as well as differing circumstances from case to case, means the range of what might be a reasonable approach at trial must be broad. To state the obvious: the trial lawyers, in every case, could have done something more or something different. So, omissions are inevitable. But, the issue is not what is possible or 'what is prudent or appropriate, but only what is constitutionally compelled.' Burger v. Kemp, 483 U.S. 776, 107 S.Ct. 3114, 3126, 97 L.Ed.2d 638 (1987).

Murray, 477 U.S. 527, 536, 106 S.Ct. 2661, 91 L.Ed.2d 434 (1986) (quoting Jones, 463 U.S. at 751); see also Smith, 882 F.2d at 899 (Counsel's failure to raise a weak constitutional claim may constitute an acceptable strategic decision designed "to avoid diverting the appellate court's attention from what [Counsel] felt were stronger claims"). Although recognizing that "[n]otwithstanding Barnes, it is still possible to bring a Strickland claim based on Counsel's failure to raise a particular claim" on direct appeal, the Supreme Court has recently reiterated that "it [will be] difficult to demonstrate that Counsel was incompetent." Robbins, 120 S.Ct. at 765. "Generally, only when ignored issues are clearly stronger than those presented, will the presumption of effective assistance of Counsel be overcome." Id. (quoting Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986)); Bell v. Jarvis, 236 F.3d 149, 164 (4th Cir. 2000) (en banc).

Appellate Counsel is not deficient for failing to raise on appeal an issue that was not preserved for review. Legge v. State, 349 S.C. 222, 562 S.E.2d 618 (2002); Gilchrist v. State, 612 S.E.2d 702, 705 (S.C. 2004) (appellate Counsel not ineffective where trial Counsel's submission of the request to charge, without any further explanation of his point, was insufficient to preserve for review the trial court's failure to charge the specific language regarding "a right to act on appearances."); see State v. Hicks, 330 S.C. 207, 499 S.E.2d 209, cert. denied, 525 U.S. 1022, 119 S.Ct. 552, 142 L.Ed.2d 459 (1998) (issue must be raised to and ruled upon by trial court to be preserved for review); State v. Dickman, 341 S.C. 293, 534 S.E.2d 268 (2000) (party may not argue one ground at trial and an alternate ground on appeal).

To prove prejudice, the applicant must show that, but for Counsel's errors, there is a reasonable probability he would have prevailed on appeal. Strickland, supra; Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). That is, the Applicant must prove prejudice by showing he

would have prevailed on appeal had a writ been filed by Counsel and granted by this Court. See Simpkins v. State, 303 S.C. 364, 401 S.E.2d 142 (1991) (appellate Counsel ineffective in failing to raise issue, preserved below, which would have entitled defendant to reversal on appeal).

This asserted issue of an unwaivable conflict was never preserved for review in any manner by objection or otherwise. The Applicant has failed to show that there any exception to the Court well-established preservation rules to allow this to be raised de novo for the first time in a direct appeal to the Supreme Court. As stated in Legge, appellate Counsel cannot be deemed deficient in failing to do what the rules of court do not authorize him to do - raise an unpreserved ground.

Alternately, prejudice has not been shown. First, if raised without being preserved on objection below, the appellate court would have dismissed it. See State v. Hicks, supra (issue must be raised to and ruled upon by trial court to be preserved for review). Second, even if considered, for the reasons set out in response to ground A, the alleged conflicts was not unwaivable as a matter of law. This Court incorporates this section of this Order by reference. For this additional reason, the matter must be dismissed and denied as failing in the burden of proof to show ineffective assistance of Counsel.

In conclusion, with regards to Ground S, the Applicant claims he was denied effective assistance of Counsel by his appellate Counsel's, Robert Dudek, failure to argue on direct appeal that trial Counsel's actual conflict of interest was so serious as to be unwaivable. As previously stated in this Order, the Court has found that that Mr. Aleksey has failed to prove that his trial Counsel was representing Mr. Aleksey while acting under an actual conflict of interest. Further, the Court finds that for any appearance of conflict, there was a knowingly and intelligent waiver

by Mr. Aleksey, and Mr. Aleksey was fully advised of any appearance of conflict, both by Counsel and by the Court. Therefore, since there was no actual conflict, and because any appearance of conflict was properly waived and no objection raised or error preserved, this Court is constrained to find that Mr. Dudek's representation of Mr. Aleksey was not ineffective. As a result, this Court must deny Mr. Aleksey's application for PCR in this regard.

P(6). Trial Counsel failed to investigate fully and effectively Applicant's life and background and to present the information to the sentencing jury in a coherent and meaningful manner. Counsel failed to utilize properly the information their investigation uncovered and to find other information. Counsel failed to employ the services of a social worker. Counsel failed to employ the services of an adaptability expert to testify as to Applicant's likelihood to adapt to prison life if sentenced to life in prison.

IAC and Prison Adaptability Expert

In Applicant's allegation P(6) and brief, he asserts that trial Counsel was ineffective in the penalty phase in failing to retain an expert on prison adaptability to testify that Mr. Aleksey was adaptable to prison life based upon the decision in Skipper v. South Carolina, 476 U.S. 1 (1986). He relies upon the PCR testimony of former S.C.D.C. employee, James Aiken in support of his claim.[23] This Court incorporates by reference its earlier Order as to Ground A related to a

[23] Recently, in a decision made subsequent to the briefing in this case, the South Carolina Supreme Court issued a cautionary instruction to similar type testimony. In State v. Bowman, 366 S.C. 485, 498-499, 623 S.E.2d 378, 385 (2005), the Court stated:

> "We take this opportunity, however, to caution the State and the defense that the evidence presented in a penalty phase of a capital trial is to be restricted to the individual defendant and the individual defendant's actions, behavior, and character. Generally, questions regarding escape and prison conditions are not relevant to the question of whether a defendant should be sentenced to death or life imprisonment without parole. We emphasize that how inmates, other than the defendant at trial, are treated in prison; and whether other inmates have escaped from prison, is inappropriate evidence in the penalty phase of a capital trial. We admonish both the State and the

similar claim in the conflict of interest section. This Court finds that Counsel had a strategic reason for not pursuing this type of evidence and was not deficient. Alternately, prejudice under Strickland has not been shown. This specification is without merit and must be dismissed.

A capital defendant is given broad latitude to offer mitigating evidence because "the penalty of death is qualitatively different" than any other sentence. See Lockett v. Ohio, 438 U.S. at 604, 98 S.Ct. at 2964 (quoting Woodson v. North Carolina, 428 U.S. 280, 304, 96 S.Ct. 2978, 2991, 49 L.Ed.2d 944 (1976)). The death penalty's irrevocable end has prompted the Supreme Court to require the sentencer in capital cases to consider a defendant's violent and troubled youth, see Eddings v. Oklahoma, 455 U.S. 104, 102 S.Ct. 869, 71 L.Ed.2d 1 (1982), good behavior in prison, see Skipper v. South Carolina, 476 U.S. at 1, 4-5, 106 S.Ct. at 1669, 1670-71 (1986), history of child abuse and emotional problems, see Penry v. Lynaugh, 492 U.S. 302, 109 S.Ct. 2934, 106 L.Ed.2d 256 (1989), ineligibility for parole, see Simmons v. South Carolina, 512 U.S. 154, 162, 114 S.Ct. 2187, 2193, 129 L.Ed.2d 133 (1994), poverty-ridden childhood, see Hitchcock v. Duggar, 481 U.S. at 397, 107 S.Ct. at 1823-24, good deeds as an affectionate uncle, see id., and childhood habit of inhaling gas fumes, see id.

In this ground, he claims that trial Counsel should have employed an expert to opine on Mr. Aleksey's adaptability to prison. At trial, former Orangeburg Detention Center Officer Maurice Keitt testified on January 27, 1998, Mr. Aleksey told him that he had just knocked one

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defense that the penalty phase should focus solely on the defendant and any evidence introduced in the penalty phase should be connected to that particular defendant."

Accord State v. Burkhart, 371 S.C. 482, 640 S.E.2d 450 (2007) (evidence of the defendant's characteristics admissible in the sentencing phase of a capital trial may include prison conditions if narrowly tailored to demonstrate the defendant's personal behavior in those conditions).

of the small windows out. R. 1970. He stated he saw that the window was broken out and that Mr. Aleksey had broken a metal stool from the stand that was attached to the floor. R. 1971. When Mr. Keitt asked Mr. Aleksey why, he declared he was frustrated. R. 1972, 1974. He said Mr. Aleksey was sent to "safekeeping" shortly after this which, in his experience, was where people were sent if they might hurt themselves or escape or be a high risk. R. 1973.

Deputy Director of the Orangeburg Detention Center, Vernetia Dozier, testified that she had received a report that on January 27, 1998, Mr. Aleksey had taken a stool and ripped the stool off the wall and broken the window out of the cell. R. 1978. She stated that based upon this conduct, they initially signed a warrant for the damage done to the jail and attempted escape and sent him to safekeeping. R. 1978. She described safekeeping as a place where they send inmates that are hard to handle or an escape risk. R. 1978.

On cross-examination, Counsel Stone had Dozier describe the movement from the normal cells to an upstairs room. Importantly, she stated that it was department policy to charge anyone who cracks or breaks a window with escape if it's an exterior window. R. 1979. Mr. Stone had her describe that to escape, the inmate would have to get through the window, then through the jail yard, then over the fence with razor wire. R. 1979. Further, on re-direct, she declared no one had gotten through the type of small window Mr. Aleksey broke. R. 1980-81.

On re-cross, Dozier stated that Mr. Aleksey did not escape from his jail cell and she was informed that he called for help after he broke the window. R. 1981.

The next day of the sentencing hearing, Solicitor Bailey noted that Director Dozier had made an unresponsive comment that revealed there was a warrant for escape. R. 2024. Solicitor

Bailey felt that a curative instruction to disregard the evidence about the escape warrant would be appropriate.

Counsel Stone requested the curative instruction "to disregard any of the questions concerning escape." R. 2024-25.

Judge Cottingham concluded that he would tell the jury to disregard that in its entirety and that there is no warrant for escape. R. 2025. During the instructions, the jury was instructed:

> This defendant is not charged with escape. There is no escape warrant outstanding. You must disregard that testimony in its entirety. It has nothing to do with the trial of this case.

R. 2028:13-17.[24]

Mr. Stone testified that because Mr. Aleksey was charged with escape, at some point he felt that prison life would be discussed and Mr. Stone wanted to be sure that the escape charge was not a realistic escape and he thought that it was sewn up at trial and did not become an issue. PCR R. 823. Mr. Stone stated that he did not hire a prison adaptability expert because he felt such testimony frequently backfires. PCR R. 1224. He was not aware of evidence to indicate that Mr. Aleksey was particularly adaptable to prison. PCR R. 1224. In addition to the damage to the chair and window, and there were lawsuits he had filed and Mr. Stone felt it was a big risk and not credible at that point. PCR R. 1225.

[24] The Applicant criticizes the prosecution for commenting during their closing about the facts concerning the breaking of the chair window, his frustration, and the safekeeping. R. 2110, 2116. Contrary to the concerns about a "warrant" this evidence was not stricken from the record and was subject to fair comment about his character and non-adaptability.

Mr. Stone stated that his notes revealed at some point in the representation he or Mr. Sims spoke with Mr. Bamberg concerning the escape incident. PCR R. 1229. He stated that they learned anytime a window was broken they were going to call it escape. PCR R. 1229.

In preparation for the defense, the defense had contacted Detention Center Director Bamberg who prepared an affidavit on May 20, 1998 [Exhibit 87]. In the affidavit, he described the fact the charges were made "because he threw a chair into the window in his cell. The window measures twenty-six and one-half inches long and five inches wide. This was the only infraction that the Defendant had during his stay in the Orangeburg Detention Center." Mr. Stone's decision not to present adaptability testimony was not based upon any fear of cross-examining individuals at the detention center, but his belief that such adaptability testimony has little persuasive value and could backfire. Further, the favorable information - the unlikelihood of escape through the window, the policy to charge based upon a broken window, and the lack of any other violation, were presented to the jury.

Counsel Sims concurred in his testimony. He stated that the theory of defense was to show that Mr. Aleksey was not a bad person and although he had a criminal history, that it was consistently non-violent. PCR R. 627, 679. Mr. Sims stated that he understood that Skipper allowed for evidence of rehabilitation and adaptability in prison to be presented, as to whether a person can adapt in prison or become a predator. PCR R.703-04.

Mr. Sims stated that he was aware prior to the trial of the existence of experts on prison adaptability. PCR R. 658. Additionally he was aware of the circumstances concerning Mr. Aleksey's actions in jail and the escape charge. Mr. Sims declared at the time of his representation, he was aware of Skipper and that although Mr. Stone was dealing with the

experts, he is sure it was discussed as potential evidence in mitigation. PCR R. 659-70. In fact, Mr. Sims recalled a case he handled where the Skipper issue was presented. Mr. Sims stated the reason that adaptability experts were not presented was not based upon any neglect of the law. PCR R. 660.

James E. Aiken

During the PCR hearing, James Aiken, former warden at Central Correctional Institution and prison system administrator, testified as an expert in adaptability and correctional risk. PCR R. 1485. It was his opinion "that Mr. Aleksey could be properly housed and secured in a correctional facility for the remainder of his life and without presenting an undue risk of harm to staff, inmates or the community." PCR R. 1487. He further opined the S.C.D.C. has adequate structure, staff, and authority "to use lethal force if required to adequately manage him. Id. Mr. Aiken, based on his review of the records opined that he did not see anything which would give him concern about Mr. Aleksey inflicting injury to staff or other inmates; although he could provide injury to himself. PCR R. 1488. Mr. Aiken further attempted to explain Mr. Aleksey's action at the jail when he broke the chair and window leading to the attempted escape charge. PCR R. 1490-91. He opined that Mr. Aleksey would have been unable to escape through the window and negotiate the perimeter fence, assuming he was restrained. PCR R. 1491.

Mr. Aiken stated that his concerns about Mr. Aleksey would not only derive from his attempted escape (low level), but his serious crime would require that he is placed at a maximum security institution. PCR R. 1492. He felt the series of grievances and lawsuits Mr. Aleksey filed against correctional officers would weigh in favor of adaptability since he is using the system to remedy his concerns. PCR R. 1493.

On cross-examination, Mr. Aiken acknowledged that an inmate, like Mr. Aleksey, who suffers from borderline, mixed personality, and antisocial features was the majority of his prison population. PCR R. 1498. He found they "most definitely" had problems with truth and were "manipulative, malingering, and con artists." PCR R. 1498. Mr. Aiken stated that he had reviewed the safekeeping petition of Orangeburg which revealed the outburst of Mr. Aleksey at the jail, required further restraint, and admitted the local facility opined that he was not adaptable to that transient jail setting. PCR R. 1500. Mr. Aiken explained that Mr. Aleksey was then sent to Lee Correctional Institution and would have been in isolation from the general population at that time. PCR R. 1501.

Mr. Aiken further admitted that if Mr. Aleksey began to tear up the jail, he would use force up to death (and had done that before) in order to control him. PCR R. 1502. Mr. Aiken also admitted that in the past, mistakes had been made in the South Carolina Department of Corrections in assessing inmates for future violence and placement. PCR R. 1504. Mr. Aiken summarized the fact that his opinion is that "any inmate", including Mr. Aleksey can be managed at the South Carolina Department of Corrections based upon the capability the institution's continuum of force up to and including that which is lethal.

Analysis

In Wiggins v. Smith, supra, the Supreme Court noted that Counsel was under a duty to do a reasonable investigation into the existence of mitigating evidence, including adaptability to prison. The record reveals that defense Counsel anticipated that Mr. Aleksey's lack of prison adaptability reflected in the destructive outburst at the jail and the removal from there to South Carolina Department of Corrections as a safekeeper would develop negative evidence on Mr.

Aleksey. Counsel contacted the local jail, prepared an affidavit and developed an understanding of their potential testimony to mitigate the claims surrounding the incident.

Counsel Stone and Sims were both aware of the right to present relevant and competent evidence of adaptability to prison life based upon the Skipper decision. Mr. Stone felt that adaptability evidence may "backfire" and felt that he was not aware of any evidence to suggest that he was particularly adaptable. His concern about the complaints and lawsuits that Mr. Aleksey had pursued caused him to think the presentation could not be credible. PCR R. 823, 1224, 1225.

The Applicant contends this investigation was unreasonable for two reasons. First, the Solicitor's argument emphasized the lack of adaptability evidence:

> "You can take a look at how Bayan Aleksey has *adapted to jail*, how he has *adapted to prison*. This is a piece of metal furniture that was in the cell here in Orangeburg. How does he react to it? He becomes frustrated. Bayan doesn't like being in that cell.
>
> So he rips this piece of metal furniture off the wall in that cell, smashes out the window and earns himself a trip up to safekeeping where Mrs. Dozier and Mr. Keitt told y'all they send people that are too unruly or just not suitable to be housed in a local jail. *That's his adaptation. That's how he adapts to a confined environment....*
>
> ...As I said before, when you think of life without parole as an alternative for the death penalty, look at how he has adapted to jail. *Look at the only evidence of his adaptability to jail*, that broken window and this broken piece of furniture and his trip to safekeeping."

R. 2110:8-23, 2116:2-7. (Emphasis Added). This argument was entirely fact-based from the record and indicated that the local jail officials had opined that Mr. Aleksey was not adaptable to the local facility causing the movement to South Carolina Department of Corrections.

Here, the defense team reasonably investigated by learning about Mr. Aleksey's adaptability to the jail setting. Mr. Stone's belief that adaptability experts can backfire was well-reflected in the testimony of Mr. Aiken who revealed:

1) Prison officials make mistakes in placements.

2) When Mr. Aiken said adaptable, he actually meant subject to be controlled, either by maximum and isolated jails, or by the use of force, which includes lethal force.

3) Mr. Aleksey's physical outburst at the jail, according to Mr. Aleksey was that he was in a four-point restraint in a cell, yet was able to break a chair and destroy a window. PCR R. 1508. Mr. Aiken stated that Mr. Aleksey's reason was to "get some attention."

4) Mr. Aiken admitted "the best predictor of future behavior is past behavior."

5) Mr. Aiken admitted that the local detention people opined he was not adaptable to their jail.

6) Mr. Aiken opined that violent behavior decreases with age and burn out in the prison setting.

7) Mr. Aiken admitted the majority of inmates are manipulative, malingering and con-artists who have problems with the truth.

Mr. Stone assessment about "backfire" was reasonable. Although the evidence was admissible as mitigating, Counsel's experience (where similar general responses would be given) reflected the problem with such testimony.

Further, prejudice has not been shown by a reasonable probability that but for his failure to present adaptability evidence, the result of the proceeding would have been different. At the hearing, Solicitor Bailey testified that he had been involved in prior cases where James Aiken testified. PCR R. 1698. Solicitor Bailey stated that he like to cross-examine experts like Mr.

Aiken from the prosecution point of view and present testimony about what the defendant is adapting to and develop a description of prison life in the general prison population – cable TV, recreation activities and amenities compared with the decedent's death. Solicitor Bailey stated that because an adaptability expert was not used, this contra-mitigation testimony in explaining actual prison life was not present. PCR R. 198-99. Solicitor Bailey noted that each time Mr. Aiken testified for the defense in the cases he had prosecuted, the verdict was death. PCR R. 1699. As noted above, on balance, the risks of the adaptability testimony and the failure to present it in Mr. Aleksey's case does not undermine confidence in the outcome. This Court finds that Applicant's claim must be denied on this basis.

IAC and Social Worker

The Applicant further contends that defense Counsel performed deficiently in failing to retain a social worker to review the records acquired by "mitigation specialist" Toni Bovee. The Applicant relies upon the deposition - testimony of Janet Vogelsang, a licensed clinical social worker, in support of their claim that Counsel was ineffective. Applicant's Memo., p. 81-83.

The Applicant summarizes social worker Vogelsang's conclusions about Mr. Aleksey as follows:

A. A special needs child.

B. Emotionally disturbed and emotionally handicapped.

C. Special education student.

D. Immature and enmeshed with his mother.

E. Alcoholic and abusive father.

F. Child that did not develop social skills that would help in relationships outside the home or able to function in world.

G. Engages in impulsive and self-destructive behavior.

H. Does better in well-structured environments where there is consistency.

I. Had mother who sabotaged his therapy.

J. Attempted suicide at least once.

K. High risk to end up incarcerated and committing a serious act.

Applicant's Memo., p. 82-83; Janet Vogelsang Depo., p. 57-60. Applicant asserts this testimony from a social worker would have been more persuasive and credible than his mother's testimony. Id. This Court concludes that viewing the record as a whole, applicant has failed in his burden to prove either deficient performance or prejudice.

During the trial, in the penalty phase, the sole mitigation witness who testified was Mr. Aleksey's mother, Vera Aleksey. R. 2069-94.

In her testimony before the jury, she described her family development and movement from Trinidad to New York leading to her marriage to Ronald. R. 2072-74. She stated her husband had a severe drinking problem that affected her life and child. After Bayan was born, Ronald's drinking increased and he became angry, disruptive, and he struck her a couple of times. R. 2072-73.

She stated she left when Bayan was three. She said her husband attempted to see her later, while drinking and continued his violence. R. 2074-75.

She stated that Bayan had educational problems and emotional problems as a child. He was a late talker, timid, had problems with his school work and failed his homework. R. 2075-76. He use to leave his parochial school and come home during the day. R. 2075-76.

After Applicant was required to repeat the fifth grade his mom stated she went to a diagnostic education center for an evaluation and for professional help for Mr. Aleksey. They recommended and he was placed in a special education class. R. 2079.

She claimed he did not have friends at school. She claimed others would pick at him. He later started making friends in high school, but then suddenly did not want them around. R. 2080-81.

Mr. Aleksey's mother said he had therapy for three (3) years at Queens Guidance Center. R. 2081. Later, he had to go to a hospital for therapy for 3 to 4 months. R. 2081-82. After that he was supposed to go to a residential treatment center. R. 2083. However, she stated that she refused to go to court to have him sent there. She had other parents state they were not pleased with that facility, including one whose daughter committed suicide. R. 2083-84.

She attempted to have him in other Counseling, including group and family Counseling. R. 2084. After services could no longer be provided, he went back to junior high, but continued to have emotional and coping problems. R. 2084-85.

She said Mr. Aleksey did not finish high school and dropped out. R. 2086.

Mrs. Aleksey described Mr. Aleksey's attempted suicide when he was 14. Mr. Aleksey took an overdose while in therapy at Queens Guidance Center. The suicide attempt resulted in a hospital visit to Roosevelt Hospital. R. 2086-87. On a second overdose attempt when he was 19, Mr. Aleksey's mother took him to Creedmore Mental Hospital. R. 2087-89. After his release from Creedmore, he continued on medication which made him sleep through the day. R. 2088.

In therapy, Mr. Aleksey's anger and resentment toward his father was revealed. R. 2089. She said on a number of occasions between 3 and 19, Mr. Aleksey's father would show up and physically abuse her.

Mrs. Aleksey described trying to be both mother and father, but was financially unable to provide for the treatment and medication her son needed. R. 2089-91.

Mrs. Aleksey felt that they were close and her life was to take care of Bayan. R. 2090. She described that he left home when he was 19, but later attempted to return home. R. 2090-91. Unfortunately, she stated they would have arguments because he would not follow her rules. R. 2092.

During that same time, her husband died from alcoholism. R. 2092. She briefly described her relationship with her living brother in New York. R. 2092-93. She stated that she had no one to turn to when she learned of Bayan's predicament in South Carolina. R. 2093. She closed by stating she loved, cried, and prayed for her son. R. 2094.

Counsel's PCR Testimony

Counsel Stone testified that in addition to Mr. Sims, the defense retained Toni Bovee as a "mitigation expert or specialist." Her job was to investigate anything that could be presented in mitigation. PCR R. 1213. He said she met with Mr. Aleksey's family. Id.

Mr. Stone stated that Ms. Bovee, as a mitigation specialist, developed the same type of evidence that his experience with a social worker in a Lexington County death penalty case presented. PCR R. 1214. In addition, they contacted Dr. Rosengard in New York, who was a mental health person, either social worker or psychologist, but after he was brought from New York, they decided not to use him. PCR R. 1215.

Mr. Stone stated they also retained psychiatrist, Dr. Donna Schwartz-Watts, to assist and provide information about Mr. Aleksey's mental state and met with her several times about his psychiatric background. They did not call her as a witness because she could not uncover anything that could help them. PCR R. 1217. Dr. Schwartz-Watts recommended neurologist, Dr. David Bachman, who testified in the guilt phase concerning Mr. Aleksey's concussive trauma. PCR R. 1218; see R. 1662-1689.

Mr. Stone stated that his initial impression was that Dr. Rosengard would be a favorable witness, but then presented information when he arrived that he blamed the mother for Mr. Aleksey's problems as an angry child with a separation disorder due to his parents breakup and that caused him an inability to do well in school as well as caused him emotional problems. PCR R. 1220. He suggested that blame was due to lack of discipline. PCR R. 1220.

Mr. Stone stated this hurt their theory because they wanted to put Mrs. Aleksey on the stand to say things about Mr. Aleksey and Dr. Rosengard would have blamed it on her. PCR R. 1220.

Mr. Stone confirmed Ms. Bovee was a background investigator about mitigation, not a crime scene investigator. PCR R. 1221.

Solicitor Bailey testified that in preparation for trial he prepares for the use of social workers as potential witnesses. He notes that when a social worker testifies with a lot of documentation, it gets long and the jury gets lost in the length and relevance of the information. PCR R. 1701. He stated he attempts to make points on cross-examination. He notes that he would have had whatever social histories had been done in the state hospital evaluations and in

this case, he had records which he provided to the defense about the two prior hospitalizations and his school problems. PCR R. 1702.

Counsel Sims also stated that Toni Bovee was a mitigation expert to develop mitigation evidence, but she dealt mostly with Mr. Stone. PCR R. 656-67.

Jan Vogelsang described the records she reviewed in preparation for her testimony. Particularly, she reviewed and relied upon the records of Toni Bovee. Vogelsang Depo., p. 63. These records included Ms. Bovee's reports of interviews, reviews of mental health records, school records, and the August 7, 1998 Timeline she prepared concerning Mr. Aleksey. Vogelsang Depo., p. 64-66. Most importantly, she said that all the documents and reports she reviewed were those assimilated by Toni Bovee prior to the trial. Vogelsang Depo., p. 66, Exhibits 1, 2, 3.

On cross-examination, Ms. Vogelsang noted that there was information in the records that Mr. Aleksey's judgment was poor, that his parents (including his father) sought an order of protection from Mr. Aleksey when he was 16 because they feared violence and assault from him, particularly when he was sleeping with a knife. Vogelsang Depo., p. 72. In addition, Ms. Vogelsang described a violent confrontation Mr. Aleksey had with his mother in September 1986 when he verbally assaulted her and proceeded to throw furniture around the house. Vogelsang Depo. p. 73.

Included in the deposition were some of the work product that trial Counsel had from Ms. Bovee, including her extensive interview with Vera Aleksey on July 27, 28, 29, 1998. Vogelsang Depo., Exhibit 1. Further, the interview with David Rosengard MSW (Master in Social Work) at Queens Guidance Center on August 4, 1998, which describes his interaction

with Mr. Aleksey, his nonaggressive behavior, his anger directed at himself, his poor skills at solving problems as well as his mother's attempt to blame Mr. Aleksey's problems on others, and Mr. Aleksey's inability to see the consequences of his behavior. Ms. Bovee summarized the contact by stating that Rosengard did not feel that Mr. Aleksey would shoot someone in the manner described because he appeared more destructive to himself. Vogelsang Depo., Exhibit 1. Encompassed within Vogelsang Depo., Exhibit 2 is Ms. Bovee's extensive time line which categorizes events in Mr. Aleksey's life from his parent's birth and marriage through individual events until November 8, 1997 (1998). Particularly significant, the timeline includes the following: his many mental health therapy sessions; his school attendance and grade summary; his arrests; his commitment for suicide treatment; his traffic tickets; his complaint against police officers in 1993 for beating him; his complaint against the QHDM for $10 million dollars for lack of medical treatment; his offer to drop lawsuits in return for a deal on criminal charges another comment about a $5 million dollar lawsuit; his use of aliases in criminal activity; information that Sara Pivero was charged on November 20, 1996 by for bad checks and thefts by deception involving the Lexus (Vogelsand Depo., Exhibit 2, p. 10); and Ms. Pivero's arrest while visiting Mr. Aleksey at Bucks County Correctional Facility on February 1, 1997; as well as other matters. The final exhibit to the Vogelsang deposition is the Social History prepared by K. Fisherman dated February 24, 1976.

In Wiggins, the trial Counsel only alluded to Wiggins' difficult life and his clean criminal record at sentencing. Wiggins asserted that trial Counsel were ineffective for failing to retain a forensic social worker to prepare a social history even though the State made funds available for that purpose. If trial Counsel had prepared a social history Wiggins maintained, they would have

discovered the severe physical and sexual abuse he suffered. The state habeas court denied Wiggins relief because it found that Counsel's decision not to investigate and present certain mitigation evidence was based on trial strategy and was thus not ineffective. Moreover, the state court noted that trial Counsel obtained social service records that did detail some abuse and mental retardation; thus, trial Counsel were aware to some extent, and did conduct some investigation into Wiggins' unfortunate childhood.

In reversing the state habeas court, the Supreme Court restated that deference is owed strategic judgments made by trial Counsel. However, the Court emphasized that deference is owed strategic decisions only when the investigation supporting those judgments was adequate. Wiggins, 539 U.S. at 521-22, 123 S.Ct. 2527. Where trial Counsel has not "fulfill[ed] their obligation to conduct a thorough investigation of the defendant's background," "Counsel's failure to uncover and present voluminous mitigating evidence at sentencing could not be justified as a tactical decision." Id. at 522, 123 S.Ct. 2527 (quoting Williams, 529 U.S. at 396, 120 S.Ct. 1495). Therefore, the "principal concern in deciding whether [trial Counsel] exercised 'reasonable professional judgment' is not whether Counsel should have presented a mitigation case. Rather, we focus on whether the investigation supporting Counsel's decision not to introduce mitigating evidence of Wiggins' background was itself reasonable." Id. at 522-24, 123 S.Ct. 2527 (internal citations omitted). The Court held that Wiggins' trial Counsel's investigation was inadequate because "Counsel abandoned their investigation of petitioner's background after having acquired only rudimentary knowledge of his history from a narrow set of sources." Id. at 524, 123 S.Ct. 2527 (citing the ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases 11.8.6, p. 133 (1989) (stating that among the topics Counsel

should consider presenting are medical history, educational history, employment history, family and social history, prior adult and juvenile correctional experience, and religious and cultural influences)). Trial Counsel did obtain a psychologist to evaluate Wiggins. Trial Counsel also procured Wiggins' social services records and had available to them the presentence investigation report. However, the Court found that trial Counsel should have nonetheless arranged for a forensic social worker to compile a report of Wiggins' social history, and trial Counsel was found ineffective for not so doing.

The Court in Wiggins also held that the scope of trial Counsel's investigation was unreasonable in light of the investigation that they did conduct. In trial Counsel's investigation, they did discover that Wiggins' mother was an alcoholic, that he was shuttled between foster homes, and that his mother often left him and his siblings alone without food. The Court held that based on this information, a reasonably competent attorney would have further investigated Wiggins' background. "In assessing the reasonableness of an attorney's investigation, a court must consider not only the quantum of evidence already known to Counsel, but also whether the known evidence would lead a reasonable attorney to investigate further." Id. at 527, 123 S.Ct. 2527. The Court held that Wiggins' trial Counsel "chose to abandon their investigation at an unreasonable juncture, making a fully informed decision with respect to sentencing strategy impossible.... As a result, the court's subsequent deference to Counsel's strategic decision not 'to present every conceivable mitigation defense,' despite the fact that Counsel based this alleged choice on what we have made clear was an unreasonable investigation, was also objectively unreasonable." Id. at 527-28, 123 S.Ct. 2527; Accord Rompilla v. Beard, 545 U.S. 374,125 S.Ct. 2456 (2005).

Deficient Performance Not Shown By The Failure To Retain A Social Worker

The Applicant has not shown that Counsel's investigation was deficient in failing to retain a licensed social worker. First, the defense retained a mitigation investigator, Toni Bovee, whose marshaling of materials was completely relied upon by Ms. Vogelsang in her deposition. It provided whatever information was necessary: A contrast of the testimony of Ms. Vogelsang with the testimony of Mr. Aleksey's mother revealed that Ms. Vogelsang testimony was merely a conduit of the information about which Ms. Mr. Aleksey had already testified. More importantly, since Ms. Vogelsang testimony was merely a hearsay summary of the records which defense Counsel necessarily were aware of in their investigation through the efforts of Ms. Bovee, it is difficult to discern how Mr. Aleksey can now assert Counsel was ineffective in their investigation in developing the same information. To the contrary, in a quest to prove prior Counsel ineffective, Applicant has proven that Counsel was reasonable in their investigation of his background by their interview of family; review of records of prior mental health professionals; and retention of an independent forensic psychiatrist and neurologist. Unlike Wiggins, where the Court determined the decision to cut off the investigation came prematurely, the team of Mr. Stone, Ms. Bovee, and Mr. Sims continued the quest up to the time of trial.

The Applicant's complaint against prior Counsel is not one of deficiency in investigation, but a disagreement on style. Ms. Vogelsang's testimony revealed nothing new for it relied completely on the reasonable investigation done before. Counsels' strategic dilemma came to a head in the decision whether to use Master in Social Work David Rosengard, who was involved in Mr. Aleksey earlier treatment, where his testimony might cast a negative impression on Ms. Mr. Aleksey's testimony. At that moment a decision had to be made, whether to present the

social worker who had real and credible interaction with Mr. Aleksey and his family yet found Ms. Mr. Aleksey at fault in causing many of her son's problems or go with the mother allowing her to plead her son's case in mitigation. Facing that choice, with the same information that Ms. Vogelsang possessed, defense Counsel tactically chose to present the mother and leave her negative relationship to the risk, however unlikely, of Solicitor Bailey's cross-examination to break down that relationship. Now, he seeks to assert that another social worker - one more step removed from the facts than Rosengard and the other mental health professionals should have presented testimony about her review of the records, including Rosengard.

The Applicant appears to assert a checklist type of claim that any time the death penalty is sought, defense Counsel is required under the constitution to both retain and call a social worker to testify about that Applicant's background. This assertion is a misreading of the mandate of Wiggins. See Gudinas v. State, 816 So.2d 1095 (Fla. 2002) (Counsel was not ineffective in failing to hire social worker, for presentation of mitigation evidence at penalty phase of capital murder trial; Counsel hired and consulted with mental health experts for purpose of determining effect of defendant's social history on his life and on the case, and social worker's testimony would have been cumulative to the mental health and other mitigating evidence actually presented).

Additionally, the complaint about the decision to hire a social worker appears to be second-guessing by current Counsel, rather than identification of a defect in trial Counsel's strategy. The Strickland Court acknowledged, "Even the best criminal defense attorneys would not defend a particular client in the same way." 466 U.S. at 689, 104 S.Ct. 2052. "The standard is not how present Counsel would have proceeded, in hindsight, but rather whether there was both

a deficient performance and a reasonable probability of a different result." Cherry v. State, 659 So.2d 1069, 1073 (Fla.1995); Duncan v. State, 925 So.2d 245 (Ala.Crim.App. 2005) (defendant failed to establish that trial Counsel's failure to obtain assistance of social worker in murder prosecution was ineffective assistance of Counsel where he failed to identify how such third person assistance would aid defense, and Counsel did, in fact, obtain some expert assistance in preparing for trial).

Prejudice Not Proven

The Applicant has also failed in his burden of proof to show prejudice. Contrasting the testimony of the mother and Ms. Vogelsang, the jury was equipped with most of the same information. The assertions before this Court are similar to those raised in Jones v. State, 332 S.C. 329, 504 S.E.2d 822 (1998). In Jones, the Court stated:

> "Just because it was unsuccessful does not mean that Jones can now recharacterize the evidence and claim that Counsel did not adequately present mitigation evidence. The "new" evidence is the same as the "old" evidence. At best, it is a fancier mitigation case. If the evidence was not persuasive in the first case, the defendant does not get a second chance. Otherwise, there would never be an end to litigation."

Jones v. State, 332 S.C. 329, 339, 504 S.E.2d 822, 827 (1998). Further, the risk of the testimony of Ms. Vogelsang was revealed at the deposition. Evidence about his perceived violence toward the family was revealed on cross-examination. Background hearsay which formed the basis of the speculative opinion were not consistent. A different picture - one less favorable and more violent - was presented by the social history. To use the words acknowledged by James Aiken – the best predictor of future behavior is past behavior. The social worker potentially could have presented evidence of Applicant's possession of deadly weapons (gun and knife); firing a gun at

another person (Vogelsang Depo. p. 56); applicant's violent and abusive assaults against his mother (Vogelsang Depo. p. 71-72); and applicant's throwing furniture (Vogelsang Depo. p. 73). Although the negative opinions concerning the mother were untouched and the use of the social worker make the possibility of Rosengard's impressions able to be presented, that tactically must be balanced against Mr. Aleksey's social history of assaults against and fear of him by his family members. The solicitor anecdotally recognized these risks for the defense in calling for social work evidence in his prior cases involving similar testimony.

Assuming Counsel erred in their approach regarding social work testimony, the error did not create a reasonable probability, absent the error, that the result of the proceeding would be different under Wiggins. Therefore, relief based upon this ground must be denied.

O. Applicant was denied the right to the effective assistance of Counsel as guaranteed by the Sixth and Fourteenth Amendments of the United States Constitution and Article 1, Section 14 of the South Carolina Constitution and South Carolina law including S.C. Code Sections 163-26(B)(1) and 17-23-60 at the guilt or innocence phase of his trial. Williams v. Taylor, 120 S.Ct. 1495 (2000); Strickland v. Washington, 466 U.S. 668 (1984); Jolly v. State, 443 S.E.2d 566 (S.C. 1994).

(1) Beginning with the opening statement and throughout the entire guilt or innocence phase of Applicant's trial, trial Counsel "opened the door" to alleged prior bad acts and bad character of Applicant.

Opening Statement and Non-Violent Bad Acts of Mr. Aleksey and IAC

In this allegation, Mr. Aleksey complains about the overall trial strategy of defense Counsel. A review of the post-hearing memorandum of the Applicant does not include any specific reference to this specification of error, although in the third amended application, Mr.

Aleksey does not suggest that it has been abandoned. Nevertheless, this Court must find Applicant has failed in his burden of proof on this issue.

This Court must recognize that often times Counsel for a defendant, and particularly capital defense Counsel, are faced with strategic decisions which benefits and risks exist with each alternative course of action. See Burdge v. Palmateer, 338 Or. 490, 497, 112 P.3d 320 (2005) (reasonable skill and judgment is exercised when Counsel apprehends issue, sees a course of action that could benefit client, and concludes that the benefits of that course of action outweigh the risks). The United States Supreme Court reasonably acknowledge it in a setting where Counsel concedes the guilt of his client as a sound trial strategy and that such a concession by Counsel does not require petitioner's consent. Florida v. Nixon, 543 U.S. 175, 187-88, 125 S.Ct. 551, 560-61 (2004) (provided that a defendant is informed of Counsel's decision, reasonable strategy of conceding guilt to murder in order to preserve the defendant's credibility did not require the defendant's express consent because it is not the functional equivalent of a guilty plea). Petitioner does not contend that he was not informed of his trial Counsel's strategy to focus on a defense theory that the victim's death was the unintended consequence of a burglary. See Gorham v. Thompson, 332 Or. 560, 567, 34 P.3d 161 (2001) (reviewing court "will not second-guess a lawyer's tactical decisions in the name of the constitution unless those decisions reflect an absence or suspension of professional skill and judgment"); Young v. Catoe, 205 F.3d 750 (4th Cir. 2000) (admission of guilt not ineffectiveness when thrust was to avoid death penalty); U.S. v. Wilkes, 46 F.3d 640, 644 (7th Cir. 1995) (conceding lesser offense to enhance credibility).

In the defense opening statement, Counsel; Mr. Stone stated:

> ... we may see things or see people on the street and assume we don't like them. I will tell you right now. Bayan Aleksey is not anybody you are going to particularly like. **He has been arrested before. He has been charged before, forgeries, breach of trust, things like that. He has never been tried before because what you will learn either from the solicitor or me is that he has a couple of names. He's got a couple of fake ID's. When he gets arrested, he presents his fake ID. He makes bond and he leaves.**
>
> It kind of makes me wonder why somebody with that profile would shoot a police officer for speeding. Why would he panic. You will also learn a little bit more about Gloryvee Perez Blackwell, the Solicitor's main witness. . ."

R. 911-912.

The Applicant contends that this "opened the door" to bad acts which the state could not otherwise have introduced in the guilt phase of the trial, particularly if the defendant does not testify. Applicant is correct that much of the bad act evidence would not be admissible under SCRE Rule 404(a)(1) and 404(b) during the guilt phase of the trial. The problem is that reasonable strategy is evident at the outset of his argument - why would an individual confronted with numerous arrest and evasions of responsibilities on this occasion uniquely chose violence, when in the past he chose peaceable deception. In other words, if the action taken is against the conformity of his past actions, the event did not occur in that manner. Under the defense theory, it must have been done by someone who did not have that conformity of conduct to wit Ms. Perez Blackwell.

Strickland recites that there are countless ways to provide effective assistance in any given case and even the best criminal defense attorneys would not defend a particular client in the same way. Strickland, 466 U.S. at 689, 104 S.Ct. at 2065. Under this principle, the courts

have recognized reasonable defensive strategies even if they are unsuccessful. Flieger v. Delo, 12 F.3d 766, 774 (8th Cir. 1993). An attorney's conduct is not deficient simply because another (appellate Counsel) would do differently. U.S. v. Chambers, 918 F.2d 1455, 1462 (9th Cir. 1990). Speculation that a different lawyer, or the same lawyer using a different strategy or tactics, would have changed the result is an insufficient showing of prejudice. Cooks v. Spalding, 660 F.2d 738, 740 (9th Cir. 1991).

Thomas Sims declared that their theory of the case was that there was no violence in Mr. Aleksey. PCR R. 148. Mr. Aleksey may have been a bad person and done bad things, but there was never any violence in his background. PCR R. 627. Particularly, it was not in his character or his modus operendi" to shoot the trooper. PCR R. 149. He felt that the bad act - no violence strategy and his strategy with the women witnesses – Ms. Perez Blackwell, Ms. Pivero, Ms. Batkilina and Ms. Watson was consistent. He said that all during the scenario with the women, it was shown that Mr. Aleksey would use a name, get the money with them or from them, have a good time, and then move on. PCR R. 632. Mr. Sims stated it was their intent not to object to matters consistent with their theory of showing that Mr. Aleksey was a con artist - get money from woman, do things. PCR R. 152. Mr. Sims noted that he cross-examined the women to reveal that they participated in the deeds and that so long as they were having a good time he was having a good time. PCR R. 150. Simply put, Mr. Sims stated that he had no problem letting the bad acts in. Id.

Counsel acknowledged that the solicitor made a Lyle motion, but that it was not argued and the defense did not object when it was introduced. PCR R. 151. Mr. Sims stated that once the decision was made as to how they were going to proceed it was their intent not to object.

PCR R. 152. Further, Mr. Sims believed that there was clear and convincing evidence based upon their investigation of the acts. Importantly, under Strickland, Mr. Aleksey admitted to Counsel that he had done the bad acts with each of the women. PCR R. 152.

Duffie Stone concurred in the strategy and opening statement was to set the tone for the defense. PCR R. 849. The issue was a trooper was killed from a gunshot coming out of a white Mustang on I-95. The trooper eyewitness failed to see who fired the gun. PCR R. 849. Mr. Stone was left with two potential shooters - Mr. Aleksey and Perez. He felt that the theme of the guilt phase was to remove the gun from Mr. Aleksey and place it into Gloryvee Perez Blackwell's hand. PCR R. 1165. The preeminent issue was who was the passenger and who was the driver. PCR R. 849-50. Mr. Stone testified although motive need not be proven, it is an essential consideration in the jury's mind. PCR R. 850. Mr. Stone felt that he must establish who had the motive to shoot, as a way of casting responsibility on Ms. Perez Blackwell and off of Mr. Aleksey. Id.

Although in a sense, his opening statement may have placed his client in a bad light, Mr. Stone declared that it was part of the bigger picture of the case. He stated that the first thing he was trying to do in the statement was to build credibility with the jury. PCR R. 1166. Mr. Stone said he believed that if the jury thought he was lying to them at that point it would be detrimental to his client both in the guilt phase and penalty phase. Additionally, he felt a "good bit" of information (about his bad acts) would come in any way to show motive.[25] Mr. Stone believed

[25] In the context of evidentiary law, State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923), and its progeny protect a defendant from the unrestricted admission of bad act evidence. Lyle prohibits such evidence unless the evidence has a particular relevance to the crime charged and falls within at least one of five categories: motive, identity, common scheme or plan, absence of mistake or accident, or intent. Further, bad acts that are not the subject of conviction must be proved by clear and convincing evidence. State v. Wilson, 345 S.C. 1, 545 S.E.2d 827 (2001). This

that the state was going to try to show that Mr. Aleksey was running from the charges, that he was out on bond, and the reason for his actions was to avoid arrest. Mr. Stone did not think that the state would attempt to show that he was merely speeding and that was why he shot and killed the Highway Patrolman. PCR R. 1167. Knowing that the state would be attempting to prove his client was running from the other charges and jail, Mr. Stone stated he was attempting to turn the State's theory to their advantage by depicting Mr. Aleksey's conduct as nothing out of the ordinary for him.

Mr. Stone stated Mr. Aleksey had numerous false identifications on him at the time of the arrest. He had a consistent pattern of being stopped or being arrested and going to jail and presenting the false identification, bonding out and then never being seen or heard from again. PCR R. 850, 1167. Based upon the consistency of Mr. Aleksey actions when confronted with an actual or potential arrest, Mr. Stone theorized to be candid with the jury about Mr. Aleksey's past would diffuse the State's case regarding motive for Mr. Aleksey to be the shooter. PCR R. 1168. According to Mr. Stone, Mr. Aleksey had a way out with his ID's; however, he wanted to suggest that Perez would have had no such way out other than shooting the police officer. PCR R. 1168.

Mr. Stone felt that his investigation of Perez was supportive of their defense theory, in particular, the drugs and the history of her violent temper towards her husband. PCR R. 851, 1169. Also, she had a desire not to lose her children. PCR R. 851. Mr. Stone stated that they had

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preliminary fact-finding by the judge ensures the evidence is subjected to some procedural safeguard before the jury hears it. See Rule 404(a)(1), SCRE ("Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except: (1) Character of Accused. Evidence of a pertinent trait of character offered by an accused, or by the prosecution to rebut the same[.]").

a sense of confidence about that case. He hoped to link Perez with the drug trade and the I-95 high drug corridor. PCR R. 1169. He felt that if he could successfully link her to the drug trade that it would give her a reason for the shooting. Id.

Mr. Stone felt that Perez's prior conviction for cocaine was important to their theory, Perez was indicted with her mother and that her mother went to prison while Perez received probation. PCR R. 1169-70. Mr. Stone testified he learned Perez may have cut a deal against her own mother to avoid jail. Further, his investigation revealed that her family was involved with ballooning heroin. However, Judge Cottingham only allowed the impeachment of Ms. Perez Blackwell on the possession of cocaine plea. PCR R. 1170. Mr. Stone did feel that he was able to develop before the jury that I-95 was a drug corridor. Id.

Mr. Stone felt that another issue against Perez and helpful to Mr. Aleksey was they had learned that she had used a gun before; fired it before, indeed she had shot a gun at her ex-husband; kicked in his windshield and had a volatile temper. Mr. Stone stated that he was unable to develop this theory as much with the jury as they hoped. PCR R. 1171.

Mr. Stone stated that Mr. Aleksey had advised him about the stolen checks Perez had taken that he had deposited. Mr. Aleksey provided Mr. Stone a good deal of information that led him to believe that Perez and Mr. Aleksey were involved in a criminal operation together. PCR R. 1172. However, Mr. Aleksey told him that he had no knowledge of any involvement with drugs and that he saw Perez throw something out of the window. Id. Mr. Stone testified he perceived that the relationship between Mr. Aleksey and Perez as one of "boyfriend/girlfriend/co-conspirator." Id.

Mr. Stone admitted that he never saw any information that Perez asserted that she, not Mr. Aleksey, pulled the trigger. PCR R. 1172. Additionally, Mr. Stone did not interview Perez prior to the questioning at trial. She was represented by Mike Culler with whom he had many conversations when she objected to them going through her belongings. PCR R. 1173-74. However, Mr. Stone admitted it was merely a fishing expedition, not based upon something that his client told them to look for. PCR R. 1174.

Mr. Stone stated that he had conversations with Mr. Aleksey about each of the female witnesses. PCR R. 1177. Additionally, he spoke with Yelena Batkilina by telephone prior to trial. She stated that she was on probation at that time "because of him" and that she had already spoken to the solicitor about that case. Id. He noted that Mr. Sims cross-examined each of the women. PCR R. 1178. Mr. Stone stated that their theory was that he may have been a con artist or a womanizer, but he was not that type of person who would have done something violent.

Mr. Stone stated that he learned probably from her statement that Ms. Batkilina needed help for her trouble in Florida. PCR R. 1179. However, when they asked Mr. Aleksey for specifics on what information he had on the women, he gave them very little. PCR R. 1180.

Concerning the gun used in the shooting, Mr. Stone noted at trial that the manner in which the fingerprint was located on the gun suggested that it was in reverse order of his pointing the gun, it was as though Mr. Aleksey had taken it from someone. PCR R. 1181. However, the defense could not get around the fact that the gun was traceable to Ms. Batkilina and his association with her. PCR R. 1182. Also the connection to Ms. Batkilina was strong because she had acted as his girlfriend and posted bond previously for him and continued their friendship after the time he was in custody when she called Mr. Stone. Id.

At one point during Mr. Stone's conversations with his client, Mr. Aleksey told him that Ms. Batkilina held him at gunpoint, but at another time Mr. Aleksey maintained that Ms. Batkilina threw the gun on his lap or even handed it to him. PCR R. 1183. Mr. Stone indicated that his client's versions to him were inconsistent. Id.

Counsel also stated that he had spoken with Mr. Aleksey before the trial about Lisa Watson. PCR R. 1183-84. Mr. Stone stated that with regards to everything that they uncovered there always seemed to be the two of them involved. He recalled sending retained investigator and former FBI agent Davis to New York to check out information regarding Ms. Watson. Mr. Stone said when they checked out the events involving this woman, they consistently learned that Mr. Aleksey and Ms. Watson bought a Lexus together; bought the motorcycle together; their actions being consistent with a romantic relationship. Counsel's investigation also consistently showed that Mr. Aleksey knew how to get out of trouble when he needed to. PCR R. 1186. Mr. Stone said he felt that Mr. Aleksey appeared street smart and the defense clung to his theory throughout the trial, to wit, why would Mr. Aleksey take this inconsistent violent action? Id.

Mr. Stone stated, in hindsight, maybe they should have cross-examined more, but the big point was everything they were getting in was consistent with the defense theory, and there should be no shock value from the guilt phase. PCR R. 1186. It was their goal to use each of the witnesses to establish that Mr. Aleksey was non-violent, even those that stated he had handled a gun where they asserted that they did not take him seriously or that he was pitiful looking and almost suicidal. PCR R. 1187. Mr. Stone testified their theory was he never hurt any of them and in fact once was beaten up by the girl. Id.

Albeit there was the problem area when Mr. Aleksey shot a gun at a car while up north. Mr. Stone felt that this act was harmful however this was the only bad act that he could recall that failed to advance their theory. PCR R. 1187.

This Court finds that the Applicant has failed in his burden of proof. Counsels' credible testimony reveals that the strategy had an aura of persuasion based upon his past conduct. Further, it was a strategy that developed enhanced credibility with each non-violent incident and arrest in which Mr. Aleksey was involved in. The structure of the defense was to have the state concur with the defense's case through much of their evidence. If the defense would have successfully challenged the admission of the evidence, their defense theory's foundation would have been destroyed. This strategy was not developed from ignorance or neglect, but directly from the client's versions presented, as supported by Perez's divergent history of drugs, hot temper and violence, and her apparent willingness to "sell out" her mother to avoid prison for herself. Relief on this ground is denied.

O. (Guilt Phase IAC continued)

6. Trial Counsel failed to properly cross examine SLED agent Mears. Counsel did not question Mears about Applicant's allegations of coercion during police interrogation. Counsel failed to question Mears about certain evidence belonging to Gloryvee Perez Blackwell found in car that was evidence of her recent criminal activity and gave her motive to shoot Trooper Lingard. Counsel failed to cross examine Mears about the missing SLED statement of Sara Pivero.

7. Trial Counsel failed to properly cross examine SLED agent Darnell. See (6) above.

In these two allegations, Mr. Aleksey contends that Counsel failed to question SLED Agents Mears and or Darnell about the allegations of coercion during the police interrogations.

As noted above, the Applicant failed to assert what this "coercion" was either to the trial court or Counsel. Counsel failed to present any evidence of actual coercion and failed to assert at any time in their presentation of Agent Mears testimony any material, document or evidence which would suggest that the statement of Mr. Aleksey was the product of any undue coercion. He failed in his burden of proof of showing either deficient performance or prejudice. There has been no showing of any omission of defense Counsel, which to a reasonable probability the result of either the Jackson v. Denno hearing, the guilt, and/or the penalty phase result would have been different. The allegation to the contrary must be dismissed.

Further, the claim about a failure to cross-examine either agent about the "missing" statement of Sara Pivero is without merit. The sole basis for this is the reference in the SLED report, Applicant's Exhibit 83 to an item styled Attachment 44 Sara Pivero Statement without any statement attached. According to the testimony of Agent Darnell, he described their attempts and expectations that she would prepare a written statement when they were putting the report together. PCR R. 1678-79. However, in the manner the report was prepared, he placed a piece of paper in there with the expectation that a statement from her would replace it. However, he declared that they never received a statement from her. PCR R. 1679.

This Court must conclude that defense Counsel was neither deficient nor has prejudice under Strickland been shown by failing to inquire of the agents concerning the statement they never received.

GLORYVEE PEREZ BLACKWELL CLAIMS

Ground O (4) **IAC – Guilt**

Trial Counsel failed to properly cross examine and impeach state's witness, and Applicant's former co-defendant, Gloryvee Perez Blackwell.. Counsel failed to impeach witness with evidence of her motive to commit crime of which Applicant was charged. Counsel failed to prove Ms. Perez Blackwell's character through character evidence involving specific instances or relevant dishonest conduct.

Ground O (9) **IAC**

Trial Counsel failed to fully investigate the crime charged and the state's witnesses and to present that information to the jury in a coherent and meaningful manner.

Ground O (10) **IAC**

Trial Counsel failed to adequately investigate Gloryvee Perez Blackwell. Such an investigation would have uncovered a substantial amount of evidence that Ms. Perez Blackwell had a significant motive to shoot the victim.

Ground Q **BRADY**

Applicant was denied due process, as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and South Carolina law by the prosecution's failure to disclose material information which was favorable to the defense on issues of guilt and punishment. Brady v. Maryland, 373 U.S. 83 (1963) and Kyles v. Whitley, 514 U.S. 419 (1995).

Ground Q (1) **IAC**

The prosecutor knowingly failed to disclose evidence of Gloryvee Perez Blackwell's motive and recent criminal activity and affirmatively mislead trial Counsel regarding the existence and materiality of this evidence.

In these allegations, Mr. Aleksey contends that trial Counsel failed to investigate the background of Gloryvee Perez Blackwell. The record reveals that Ms. Perez Blackwell testified at the trial after an in camera hearing. R. 1295-1352. The record also reveals she was thoroughly cross-examined. R. 1310-18, 1318-28 (in camera), 1328-43. The Applicant further maintains that the prosecution failed to disclose appropriate documents under its constitutional obligation regarding the conduct of Ms. Perez Blackwell. This Court finds that he has failed in his burden of proof.

A. How Gloryvee Perez Blackwell Testified At Trial

During the state's case in chief in the guilt phase, the prosecution called the passenger in Mr. Aleksey's car, Gloryvee Perez Blackwell, about her knowledge concerning the shooting of Sergeant Lingard. Prior to her testimony, the prosecution stated its intent to reveal two prior convictions, but that its research did not reveal outstanding arrest warrants. R. 1288-89. At that time, the defense indicated that it was aware of other outstanding traffic warrants and the trial court suggested that it would permit it. R. 1290.

Gloryvee Perez Blackwell, on direct, testified that she previously had some problems with the law. Particularly, she declared that in 1992 she was convicted in New Jersey of "possession of cocaine" and in 1991 of "shoplifting." R. 1297:2-10. She further declared that she did not recall any "speeding tickets." R. 1297:11-14. She testified that she had been charged with murder in this case, but the charges were dropped. R. 1298:2-6.

She testified that in December 1997, she met Mr. Aleksey, who she knew as "Michael Toscani" in Philadelphia. She had previously separated from her husband who was in the

Marine Corps in South Carolina. She stated that Mr. Aleksey offered for her to move in with him. R. 1299-1300.

She stated that they left Philadelphia on December 31, 1997 to go to Disney World with her two children. Mr. Aleksey drove the entire trip and she sat in the passenger seat. Her children, Mercedes and Gloria Maria, were in the back seat of the Mustang. R. 1302.

At around 11 p.m., she recalled being pulled over when Mr. Aleksey woke her from her sleep. R. 1303-04. He told her that he had been speeding. With the driver's side window down, she heard the officer's voice say "hello folks or good evening folks" in a polite way and "how are you doing." At that point, Mr. Aleksey said "how are you doing officer?" and immediately fired a gun. R. 1304:17-25. Previously unaware that there was a gun in the car, she said she saw and heard the pops and flashes from three or four shots. R. 1305:6-15. She did not hear Sergeant Lingard say anything threatening at all. R. 1305:16-20.

Immediately after he shot, they took off speeding. When shots were fired back them, Mr. Aleksey said, "no, he went down, he went down." R. 1306:2-4. She said that she began screaming as they took off. When she asked him why he did it, he said "he wasn't going to jail, he was not going to jail." R. 1306:13-16. She described the car chase and begging him to pull over. R. 1306-07. She said that when he did, an officer had a shotgun pointed at him and Mr. Aleksey said "I will shoot myself" with his gun pointed at his own head. R. 1307:6-10. At that point, she stated she jumped out of the car, grabbed her children and went to the officer. R. 1307.

On cross-examination, defense Counsel Sims initially inquired about her prior conviction for drugs. R. 1313:20-23. The prosecution then objected to going into details of the conviction going into evidence and the court agreed. R. 1314:8-11.

The defense then asserted that the witness had been indicted on ten (10) separate counts and made a bargain and pled to one of the counts. R. 1316:1-4. He contended that the information was relevant on all ten (10) charges. The trial court stated that he would permit inquiry about what she pled guilty to and arrest warrants for speeding, but not into the nine (9) other matters that she was indicted, but not tried on. R. 1317:11-21.

The defense then made a proffer of the indictments. R. 1317:22-24. The defense, in camera inquired of the witness of each of the charges on whether she was indicted and she stated that she did not recall. R. 1318-19. She did recall that she pled to one of the counts and received three (3) years probation. R. 1319:14-16. Counsel Sims declared that she pled guilty to count five and that the remaining nine counts of the indictment were dismissed. R. 1319-20, 1322-23.

During the cross-examination, she denied that she was in the driver's seat or did the shooting. R. 1334-35. She further denied driving the car into South Carolina. R. 1340-41.[26]

B. Ineffective Assistance of Counsel

In his claims related to Gloryvee Perez Blackwell, Mr. Aleksey claims that he received ineffective assistance of Counsel in various specifications. First, he contends trial Counsel failed to investigate Ms. Perez Blackwell's fraudulent activity involving Dr. Bang, Summit Bank and the Burlington Lincoln where Applicant had given Counsel notice and information concerning

[26] The witness' daughter, Gloria Maria Riveria, also testified that her mother was sitting in the passenger seat with her one (1) year old sister in the car seat in the back next to her. R. 1370-74.

the scams. Further, he complains that Counsel neglected to impeach Ms. Perez Blackwell based upon the inconsistency between the statements she gave to SLED, the Dr. Bang scam, and her trial testimony. Further, he contends Counsel should have developed Ms. Perez Blackwell's ability for self-protection by a history of cutting deals and shift blame involving her plea bargain on the Trenton drug case and her implication of Mr. Aleksey in the theft of Dr. Bang's checks. Lastly, he contends that Counsel should have called Marcus Blackwell, her estranged husband, about her violent temper, use of gun, and resemblance to her sister and his mother, Elizabeth Blackwell, on the influence Ms. Perez Blackwell had on Gloria Maria Rivera's statements. This Court must find as to each of these specifications, he has failed to show deficient performance or prejudice under Strickland v. Washington, 466 U.S. 668 (1984).

1. **Dr. Bang, Summit Bank, Burlington Lincoln Scam**

In his brief, the Applicant initially asserts that Counsel had the tools to investigate the fraudulent activity surrounding the theft of the checks from Dr. Bang and the fraud committed upon Summit Bank and ultimately Burlington Lincoln Mercury. In Wiggins v. Smith, supra, the Court recognized that Counsel has an obligation to do a reasonable investigation into matters which may mitigate or explain a criminal event. Further, in Strickland, the Court acknowledged that Counsel may be guided as to what is a reasonable course for an investigation by the conversations and communications they have with their client.

a. **What the Defense Knew From Their Client**

Counsel Stone specifically recalled that Ms. Perez Blackwell was fired from her job because she stole checks. PCR R. 960. Further, Counsel Stone noted on March 25, 1996, the following:

> "I have reviewed the information that Bayan sent me in some letters. The only new information concerns what Gloria was doing prior to leaving Pennsylvania. Apparently, she was working with a doctor's office. Bayan deposited some checks that Gloria had given him. These checks were reported as stolen. We need to contact the doctor's office that Gloria worked for and find out if they had any checks there were stolen and if they were deposited by Mr. Aleksey for Gloria."

Applicant's 65, p. 2; PCR R. 920.[27] In addition, Counsel Stone confirmed that he received letters from Bayan Aleksey introduced as Applicant's Exhibit 23 A, B, C. PCR R. 930.

The March 14, 1998 letter from Mr. Aleksey revealed:

> "They [SLED] have the checks that Glory stole from her job about thirty company checks Dr. B- - -Trenton, N.J."

Applicant's 23(A).[28] The record reveals the Dr. Bang checks were provided by the prosecution in discovery. Applicant's 32.

On March 30, 1998, Danneta, Thomas Sims' employee, documented a telephone call with Mr. Aleksey and noted that Ms. Perez Blackwell "took checks from her job opened an account Summit Bank, Pennsylvania, Northeast Philadelphia, $26,000 total of the checks." PCR R. 324-26, 924-25, Applicant's Exhibit 22.

In the April 19, 1998 letter to Counsel, Mr. Aleksey wrote:

> ...I remember SLED ask and telling me about a wire transfer to her acct in P.A. Summit Bank in Phila. and about some checks from her job. She worked in Trenton, N.J. at a Medical Center... It was on Field Street. Dr. Band or Bang (not sure)...

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[27] The Court understands the reference to Gloria by Mr. Stone is in fact a reference to Ms. Perez Blackwell.

[28] The Court understands the reference to Glory by Mr. Aleksey is in fact a reference to Ms. Perez Blackwell

> ...She has a checking account in Beaufort, S.C. She went to a dealership in N.J. Burlington Lincoln Mercury Ford. She had a certified check for $20,000 to get a Mark 8 Black.

Applicant's Exhibit 23(C). The letter also detailed their movement from hotel to hotel.[29]

The Applicant also asserts that the notes from Danetta, Applicant Exhibit 22 made reference to:

1) Call A1 (Manager) at Penske Truck Rental Company, 26th and 11th Ave., Manhattan, N.Y.

2) Summerfield Suites

3) Gloria has account in Beaufort

4) Gloria cashed check at Trump Casino

PCR R. 328-29.[30]

Counsel Sims declared that Mr. Aleksey never said these things to him. PCR R. 330.

b. <u>The Perez Blackwell - Aleksey Scam</u>

The Applicant, in these proceedings, developed the details behind the comments made to trial Counsel. This Court finds that the evidence suggests the following: Bayan Aleksey, using an alias of Michael Toscani, and Gloryvee Perez Blackwell went to the Burlington Lincoln Mercury Ford dealership in Burlington, N.J. on December 22, 1997. "They indicated they desired to purchase a new 1998 Lincoln Mark VIII LSC." "They indicated the down payment would be $20,000." Applicant Exhibit 33 (Keith Randall). Randall, a sales representation, advised them that the dealership would only accept the payment in certified funds or cash. Id.

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[29] In addition, the April 19, 1998 letter stated: "We went to car dealers. She tryed (sic) to get a loan from Commerce Bank, Cors State Bank, Check her credit."

[30] The Court understands the reference to Gloria in the Applicant's Exhibit 22 is in fact a reference to Ms. Perez Blackwell.

Ms. Perez Blackwell was employed at that time by Dr. Byung Kee Bang of Trenton, N.J. Applicant's Exhibit 31. Around December 23, 1997, checks belonging to Dr. Bang were stolen. Applicant Exhibit 31, 34.

On the same date the checks were stolen, on December 23, 1997, a deposit of a check of $28, 532 was made at Summit Bank. Applicant Exhibit 36. PCR R. 472. The particular checks were two stolen checks from Dr. Bang which were forged in the amount of $24,000 [7385] and $4,532 [7361], both made out to Gloryvee Perez. Applicant's Exhibit 31, PCR R. 472.

With the deposit receipt in hand, Ms. Perez Blackwell and Mr. Aleksey returned to Burlington Lincoln on December 23. On that date, Ms. Perez Blackwell filled out various documents to purchase the car. Applicant's Exhibit 33. The car was not released to them on that date. However, a promissory note was signed to pay $20,000 in funds or cash by December 26, 1997.

The early morning of December 24, 1997 at 9:30 a.m. Ms. Perez Blackwell and Mr. Aleksey went to Summit Bank. PCR R. 471. They met Christopher Sontag, the branch manager, and attempted to withdraw cash in a sum of approximately $20,000. PCR R. 471-73. Ms. Perez Blackwell advised Sontag that it was an emergency and she had to have the money that date. PCR R. 473. To appease her, Sontag provided her with $1000. PCR R. 473. Sontag then called Union Bank who informed him that the check was not good because the signature was not good and there was a problem involving her employer. PCR R. 473.

Sontag stated he told First Union not to do anything and planned a sting operation with the Philadelphia Police Department. However, when he called Ms. Perez Blackwell at her job to let her know the funds were available, the office manager, [Pat Cubberly] told him the Trenton

Police were there and Ms. Perez Blackwell was not there. Sontag stated he left several messages on her home answering machine, but Ms. Perez Blackwell never showed up. PCR R. 474. He stated the bank did not prosecute the case because it would cost them too much. PCR R. 474-75. Further, since she did not show up to collect the $25,000, the Philadelphia Police opined it was not a crime. PCR R. 478. However, the witness was not advised of this fact. The "hold" notice was placed on the account. The record also reveals that Ms. Perez Blackwell would not have received notice from Summit Bank in the mail which was postmarked January 3. PCR R. 482, 486-87, Applicant's Exhibit 40.

After speaking with Sontag, Pat Cubberly contacted Trenton Police Department on December 24 after she determined the checks were stolen. Applicant's Exhibit 31 [This time frame varies from Sontag's testimony]. An incident report was made and the police responded to Dr. Bang's office. Applicant's Exhibit 31, 34 (Trenton Police Report). The police arrived at Dr. Bang's office around 11:03 and met with Pat Cubberly initially. Id. Ms. Cubberly advised them that she was initially contacted by Dr. Bang's bank, Core States concerning two checks deposited at Summit Bank and Dr. Bang advised her that they must be stolen. The Trenton policeman reported he spoke with Perez who denied taking any checks and depositing them in her account. However, Perez stated "a guy she had been seeing for approximately two weeks was at the office on 12/23/97 and that he must have stolen the checks without her knowing it." Trenton Police Report, Applicant's 34. Ms. Cubberly opined that it would be impossible, where the checks were kept, for anyone to have taken the checks without Ms. Perez Blackwell's knowledge. Applicant's 31. When Sontag contacted Ms. Cubberly, Ms. Perez Blackwell had left the office.

Subsequently, Ms. Perez Blackwell and Mr. Aleksey checked out of Summerfield Suites. Applicant Exhibits 29, 41. The check used was written from a closed account at the MCAS Beaufort Federal Credit Union. Applicant Exhibit 41.

They checked into the Residence Inn using $500 of the $1000 cash received that date from Summit Bank. Applicant Exhibit 29.

On December 27, 1997 Keith Randall of Burlington Lincoln contacted Dr. Bang's office concerning Ms. Perez Blackwell's commitment to purchase the car. He learned that she had been fired at that time. He asserts he was advised that warrants had been issued for her arrest for the theft of the checks.[31] Applicant Exhibit 33.

c. Analysis

The Applicant contends that the alleged failure to further investigate the incident involving the conspiracy between Mr. Aleksey and Ms. Perez Blackwell to acquire the Lincoln through the use of checks stolen from her work was deficient because it would have undermined the Solicitor's argument that Mr. Aleksey was the triggerman. In particular, Mr. Aleksey has focused upon the Solicitor's closing argument in the guilt phase where he points out factors which suggested only Bayan Aleksey murdered Sergeant Lingard:

> "Gloryvee Blackwell had no motive to kill Frankie Lingard. There is no motive whatsoever. Bayan Aleksey had a motive."... "The thing, the important thing, is that other than a couple of speeding tickets, she has not got anybody looking for her. There is no warrants out on her. There is no evidence she is wanted by anybody. She has got no motive to run from anybody. The only motive of anybody in that car to avoid apprehension is Bayan Aleksey."

[31] It should be noted that no arrest warrants for the theft of checks have been produced, only the incident report.

R. 1752:7-9, 1753:15-22.

The defense team had knowledge of Ms. Perez Blackwell's involvement in the theft of the checks and passing of bad checks by Ms. Perez Blackwell with Mr. Aleksey from Mr. Aleksey. When the Solicitor argued, from this record, that no one was looking for her, this was an accurate argument based in the record (and Solicitor Bailey's knowledge). Counsel Stone was aware that Mr. Aleksey had deposited stolen checks that Ms. Perez Blackwell had given him. PCR R. 920. Further, the defense team was aware that Ms. Perez Blackwell had taken checks and deposited them into a Summit Bank account for $26,000. PCR R. 324-26, 924-25. The defense was also aware that Mr. Aleksey had advised them she had gone to Burlington Lincoln Mercury with a certified check for $20,000 to get a Mark 8. Applicant's 23(C). (Note: The record does not support that Ms. Perez Blackwell or Mr. Aleksey ever possessed or presented a $20,000 cashier's check to Burlington Lincoln).

The state had provided the defense with a current "rap" sheet for Ms. Perez Blackwell which included no pending warrants at all and particularly no warrants for any matters arising from either the theft of checks from Dr. Bang or the fraudulent use of the checks in the deposit at Summit Bank. Further, it was developed at the PCR hearing that Ms. Perez Blackwell had a discussion with the Trenton Police on December 24 and denied involvement and was not arrested.

The Applicant contends that the additional information would have removed from Solicitor Bailey's argument the "motive factors" favoring Mr. Aleksey as the triggerman; that Ms. Perez Blackwell "has not got anybody looking for her" and the only person avoiding apprehension was Mr. Aleksey. Plainly, both Mr. Aleksey and Ms. Perez Blackwell were aware

of their involvement in the joint scam to acquire the Lincoln. Further, it is clear that if this additional evidence was presented, Solicitor Bailey, at least, would not have been able to say that no one was looking for Ms. Perez Blackwell, when someone should have been looking for Ms. Perez Blackwell (or that she would have known someone should be looking for Mr. Aleksey based upon what she told Trenton police).

The defense Counsel was inconsistent on why these factors, known to the team, were not presented. Counsel Sims stated that they sent investigators up to Pennsylvania to check out her background, but did not recall, at the hearing, what they had although he knew she had been employed. PCR R. 401-02. However, Mr. Sims, upon reviewing the submitted evidence concerning the check theft stated that she did not have convictions for these incidents so that they could not be used to impeach. PCR R. 416. Mr. Sims agreed they could be evidence of fraud, but was reticent about whether Judge Cottingham would have allowed it. However, Mr. Sims stated that it could have been presented under SCRE 608(b) as character evidence and evidence of "motive" for Ms. Perez Blackwell. PCR R. 417. Regarding the information concerning Dr. Bang, the Lincoln materials, and Summit Bank, Mr. Sims stated he would like to have had the documents because "it would have shown that she definitely had some problems, or that she was out doing all kinds of things, also.". PCR R. 433.

Mr. Sims noted that in each of the impeachment matters of Ms. Perez Blackwell (and others), Mr. Aleksey was either a participant or beneficiary. PCR R. 333. Mr. Sims stated while they sent investigators to develop background on Ms. Perez Blackwell, they learned about the drug conviction and indictments. Mr. Sims asserted that he did not recall Mr. Aleksey ever asserting that the reason Ms. Perez Blackwell shot the trooper was because she was on the run

from law enforcement, but thought that issue probably came up and they sought to use the conviction to bring it out. PCR R. 640. Counsel had a concern that Ms. Perez Blackwell had drugs in her property in a diaper bag and sought to see if that was searched. He stated that if there was contraband in the bag, it may have prompted her to act the way she did and gave a reason for firing the fatal shots. PCR R. 641. However, the materials were already gone. PCR R. 641.

Counsel Sims indicated that he could not presently recall if he knew about Ms. Perez Blackwell's activities prior to trial, but stated that this information about her other activity "could have been helpful." PCR R. 682.

Counsel Stone confirmed that the focus of the case against Ms. Perez Blackwell was to develop impeachment and suggest that Ms. Perez Blackwell was the shooter. PCR R. 912. Counsel Stone concurred that at trial he stated that Ms. Perez Blackwell "has the same types of problems Mr. Aleksey does." PCR R. 915, R. 2374. Counsel recognized the fact that if they could have developed that Ms. Perez Blackwell had a "significant motive" in the case, it would have been good for the defense. PCR R. 917-18.

When asked about checking out the fact that Mr. Aleksey told them about Ms. Perez Blackwell and Mr. Aleksey taking checks from her job, and other items listed in Applicant's 22, Mr. Stone stated he recalled conversations with Mr. Sims concerning the car rental and other stuff, but not the specifics. PCR R. 925. Counsel was not sure that when he sent his investigator, Tommy Davis, up north in August prior to the trial that he went to Dr. Bang's office. PCR R. 953, 1246-47. However, his notes reflected that the investigator talked with the Trenton police. PCR R. 927-28. Also, Mr. Stone did not recall ever talking to Dr. Bang's office.

PCR R. 953. Mr. Stone stated he had prepared a document styled "Mr. Aleksey versus Blackwell comparing Blackwell's shoplifting, prior record of possession of cocaine, prior arrests for fraud, shoplifting, and drugs in Puerto Rico to Mr. Aleksey's prior arrests for fraud. PCR R. 959. Mr. Stone stated that he did not know if the Mr. Aleksey's fraud and Ms. Perez Blackwell's fraud, at the time, were the same thing. PCR R. 959. As he stated:

> I don't know if I knew the details of her financial dealings with the doctor, although I think certainly I knew that she was - - - or at least I was on notice that she had some problems with the doctor and the doctor had fired her and I believe because she stole checks. But that's - - that is - - that's the extent of what I recall knowing about her other than the heroin situation which is totally different...

PCR R. 960.

Counsel Stone, though indicated, in reference to the fraudulent checks that Ms. Perez Blackwell and Mr. Aleksey wrote to Summerfield Suites [Mt. Laurel Police Dept.], that while he would not have cross-examined her about it on contradicting her statement that Mr. Aleksey was paying for everything, he would have used them on cross-examination to show they were bouncing checks. PCR R. 1001. Mr. Stone admitted that this might show she knew people were looking for her. PCR R. 1001.

On cross-examination, Mr. Stone admitted that Mr. Aleksey told him Ms. Perez Blackwell had stolen some checks that he had deposited and he received "a good amount of information that they were involved in criminal activity together." PCR R. 1172.

It should also be noted that in the second statement Mr. Aleksey gave to the police, revealed to the defense, he described the following:

K. Mears: Were you working?

B. Aleksey: No

K. Mears: Was Gloryvee working?

B. Aleksey: Yes

K. Mears: **There were several checks in the vehicle that belonged to a doctor, do you know what checks I'm referring to?**

B. Aleksey: Yea

K. Mears: **Where did those checks come from?**

B. Aleksey: **From where she use to work at, she didn't know I had them.**

K. Mears: How did you get them?

B. Aleksey: **I was just picking her up from work and she wasn't there I just picked them up without her knowing, she didn't know I took them.**

K. Mears: Did you cash any of them?

B. Aleksey: No

K. Mears: You never did cash any of them

B. Aleksey: Huh, huh

K. Mears: Did you wire any money into an account of yours or anyone's at any time?

B. Aleksey: **Well, not wire, Gloria, it was Gloria's account, she didn't know and I deposited two checks to see if they would clear.**

K. Mears: Did the checks clear?

B. Aleksey: No

K. Mears: **What did the two checks amount to?**

B. Aleksey: **$24,000 to $28,000 something like that.**

K. Mears: So while on this crime spree, who else was involved, if anyone, besides you?

B. Aleksey: No one.

K. Mears: So you are telling us that you committed this crime of shooting the South Carolina State Trooper by yourself.

B. Aleksey: Yea

K. Mears: Gloryvee was not involved in any way?

B. Aleksey: No

K. Mears: Speak up.

B. Aleksey: No

K. Mears: Are you telling the truth?

B. Aleksey: Yes

Taped Interview of Mr. Aleksey, p. 8-9.[32] Applicant's Exhibit 83, Sec. 24. (Emphasis added). As noted, on January 2, Mr. Aleksey stated that Ms. Perez Blackwell was unaware that he had taken the checks from her office or had deposited them to see if they would clear. He also claimed to have taken them without her knowledge.

Cross-examination must be objectively unreasonable and Counsel's refraining from certain lines of inquiry is entitled to deference under Strickland. Dows v. Wood, 211 F.3d 480, 487 (9th Cir. 2000). As noted above, the defense team was aware, at the time of trial directly from Mr. Aleksey, that Ms. Perez Blackwell had engaged with him in the activity of stealing the checks and depositing them. There is no issue that these events could have been used in the

cross-examination of Ms. Perez Blackwell. The reason for omission of this inquiry, however, is not reflected in the record, primarily because the Counsel who examined the witness did not have any specific recollection of the matter and necessarily did not illustrate his reasoning to the Court.

Assuming *arguendo* that such failure was deficient, Sixth Amendment prejudice has not been shown because there is no reasonable probability the result would have been different had the jury been presented with information about the check theft from Dr. Bang and the attempt to acquire monies and the car as a result.

The Applicant asserted that this would have defeated the claim by the prosecutor of a lack of motive to shoot by Ms. Perez Blackwell. Respondents concede that it does suggest that Ms. Perez Blackwell would have known it was likely that police were looking for <u>them</u>, not just her. Yet this intent to avoid apprehension by Ms. Perez Blackwell suggested by the Applicant is immediately defeated by the fact that after the shooting when Mr. Aleksey pulled the car over during the chase she jumped out of the car with her children and ran to the law enforcement officers. R. 1307. Presumably, the same desire to "avoid apprehension" based upon her bad check theft existed when she ran to the officer. R. 1307. Further, Solicitor Bailey remaining factors weighed in the favor of Mr. Aleksey as the shooter:

A. The shots that killed Frankie Lingard were fired from the driver's side. (R. 1754).

B. Bayan Aleksey was behind the wheel of the Mustang. (R. 1755)

(1) Police saw Ms. Perez Blackwell exit the car on the passenger side. R. 1757.

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[32] The Court understands the reference to Gloria by Mr. Aleksey is in fact a reference to Ms. Perez Blackwell.

C. Mr. Aleksey led officers on a high speed chase. (R. 1759).

D. Mr. Aleksey admits a suicide attempt in his statement but the gun jams. (R. 1760).

E. The murder weapon is traced to Mr. Aleksey, not to Ms. Perez Blackwell. (R. 1761).

F. Ms. Perez Blackwell prints not on gun, but Mr. Aleksey's prints are on the gun and the clip. (R. 1764).

G. The Applicant confessed that he was the triggerman. (R. 1765).

While the motive argument may have been less available on whether Ms. Perez Blackwell had any need to avoid apprehension, it is evidence that she fled from the car and ran to the police when given the first opportunity. Further, the fraudulent activity Mr. Aleksey shared with Ms. Perez Blackwell arguably would only increase Mr. Aleksey's own need to avoid apprehension because he would have more reason to flee. The failure to inquire of Ms. Perez Blackwell about her conspiracy of fraud with Mr. Aleksey on cross-examination does not undermine confidence in the outcome. The Applicant has failed in his burden of proof.

2. **Penske Rental Center Document**

The Applicant also contends that Counsel should have further investigated the Penske Rental Center matters of December 30, 1997. He contends that the matters involved a rental reservation for a fifteen (15) foot truck with a car carrier. He asserts that the evidence would be useful to suggest planned evidence of flight and the stated intent was for the truck to go to West Palm Beach, Florida, whereas she declared in her testimony that they were headed to Disney World.

Certain salient factors must prevail to show this was neither deficient performance nor prejudicial. First, the truck was never rented nor used. Second, Mr. Aleksey indicated to Counsel that he thought he told them he was going to Disney World. PCR R. 1191. Further, in his statement to the police, he said they were going "to Florida." Applicant's Exhibit 83, § 24. (Transcribed Second Statement, p. 4). Further, during the trial, Mr. Sims stated that, to the best of his recollection, Mr. Aleksey did not indicate that Ms. Perez Blackwell was incorrect in her testimony that they were headed to Disney World. PCR R. 650. Nevertheless, he had told Counsel, like the police, they were going to Florida. PCR R. 649.

It is without question that the defense had access to the Penske truck rental document in the Mustang. See PCR R. 371-78, 699-701, 1006, 1125.

The Applicant asserts that the Penske rental receipt could have been used to impeach Ms. Perez Blackwell. Counsel Stone agreed it could have been used to show the possibility of an inconsistent statement. PCR R. 1006. Further, Mr. Aleksey had sought to have them contact Penske. Applicant's Exhibit 22; PCR R. 328-29.

The failure to develop or pursue testimony related to the Penske rental paperwork does not constitute prejudice under Strickland. First, there is no proof Ms. Perez Blackwell's testimony that they were headed to Disney World was incorrect. The mere fact that a truck rental indicated a possible destination of West Palm Beach rather than Disney World (Orlando) does not mean that Disney World was not the intended destination on that date. Similarly, Applicant asserts that the attempt to rent a truck suggests a permanent change of location. However, the truck was never used and the relevance slim at best. The failure to present this information does not undermine confidence in the outcome.

a. **Location of Paperwork Identified with Ms. Perez Blackwell on the Driver's Side**

In his memorandum, the Applicant asserts that the apparent presence of the Penske rental reservation in Ms. Perez Blackwell's name, the Distasio Monte Carlo window sticker, various motel receipts, and payroll documents on the driver's side of the vehicle, indicate the prosecution was wrong in the assertion that all of Ms. Perez Blackwell's personal possessions were on the passenger side. The record reveals, based upon the photographs taken by SLED, that these materials were located on the driver's side, either in the side door panel pocket or in a manila folder under the driver's side floor mat. Applicant's 26, 26A, 26B, 26E, 26F, 26G, 29, 30. PCR R. 364-381. It is also clear that these materials were provided by available photographs by SLED for defense's viewing by the Solicitor's Office. PCR R. 941 (Mr. Stone went to SLED to view photographs). State Exhibit 2. ("I have in excess of 100 crime scene photographs... They are available for your inspection and review and I will have copies made of any particular photograph you pick out.")

At trial, in developing his theory of who was the likely shooter, Solicitor Bailey noted that Ms. Perez Blackwell's fingerprints were only on the passenger side that she was seen getting out of in Holly Hill during the chase and:

> "We showed pictures of the personal property. All of Mrs. Blackwell's stuff is sitting on the passenger side of that car, not the driver's side."

R. 1758:4-9.

During her testimony, Ms. Perez Blackwell testified that when she exited the vehicle with her child, she left everything in the car. R. 1307-08. In referring to State 63, she pointed out her

purse on the passenger side floor, her sunglasses, and diapers. On State Exhibit 61, it showed her key chain. R. 1308-09.

Mr. Sims testified that after the conviction, Mr. Aleksey asked Mr. Sims in May 1999 to acquire certain items indicating that they were his possessions. PCR R. 644. State Exhibit 1, 2. These items, that Mr. Aleksey was aware of and asked to be returned to him, were "phone bills, hotel receipts, $235.00 in cash, box of pictures and envelopes, a black case with negatives and lie detector test from Ms. Perez Blackwell." State Exhibit 1. PCR R. 644. Mr. Sims agreed that he received a volume of receipts as a result of the request. PCR R. 644. Mr. Sims said once he got the materials, he put them in a box and shipped them to Mr. Aleksey. PCR R. 645; see also PCR R. 358-60, 363. Applicant's Exhibit 28. Mr. Sims claimed that he did not recall seeing the particular items pretrial. PCR R. 690-91.

However, Mr. Sims declared these items, Applicant's Exhibit 29, included the folder which was present on the driver's side. PCR R. 364. However, Mr. Sims did not specifically recall reviewing the folder and its contents before the trial. PCR R. 365-66.

Counsel Stone conceded that he reviewed around 200 photographs. PCR R. 1006. He recalled seeing a large number of photographs. PCR R. 943. Mr. Stone acknowledged that in the folder, apparently on the driver's side were documents from where Ms. Perez Blackwell worked. PCR R. 946-47.

The emphasis in the Solicitor's comment was that all of Ms. Perez Blackwell's "stuff" was on the passenger side and not the driver's side. First, after Solicitor Bailey developed this concept on direct examination, the defense never developed that items identified with Ms. Perez Blackwell were located on the driver's side. No questions were asked directly of Ms. Perez

Blackwell about the location of the items. Ms. Perez Blackwell had unequivocally stated that she had never driven the Mustang. R. 1300:8-13, 1302:19-20, 1305:25-1306:1.

Like current Counsel, the original defense team could have developed that paperwork identified with Ms. Perez Blackwell was located on the driver's side. Importantly though, this existence of the paperwork was not as powerful as Applicant now claims because it included paperwork related to their mutual scams. Even though the jury would have learned about the documents, the existence and location of personal use items of Ms. Perez Blackwell; her purse, sunglasses, and items for her baby were all still on the passenger side. Further, she testified that Mr. Aleksey had packed the car, which is not in dispute. R. 1301:20-21. As Solicitor Bailey stated, "I'm looking at her personal items, the kind of things that she would normally have access to, hairbrush, purse ... sunglasses, baby bottle, stuff that you would be using if you were sitting in the seat of the car." PCR R. 1293. The personal use items were the probative matters related to this issue, not documents which Mr. Aleksey would later lay a claim to. The failure of the defense to develop the existence of the paperwork does not undermine confidence in the outcome.[33]

3. Marine Corps Air Station Beaufort Federal Credit Union Checks. (MCAS Beaufort FCU)

The Applicant contends that the defense should have pursued and investigated the fact that checks written on a closed account at MCAS Beaufort FCU were used by Ms. Perez

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[33] According to the Clerk of Court records, on July 23, 1998, Solicitor Bailey wrote defense Counsel and noted the existence of additional evidence made available for their viewing including:

(1) 1 unopened box of checks in the name of Gloryvee Perez [Blackwell];
(2) Numerous checks in the name of Byung-Kee Bang, M.D.;
(3) Copies of checks of Byung-Kee Bang, M.D.; and
(4) Hotel receipts, pocket calendar, phone bills and other miscellaneous paperwork from the Mustang.

Clerk of Court Record, July 23, 1998 Letter, Bailey to Mr. Sims and Stone.

Blackwell to pay the bill at Summerfield Suites. These three (3) checks were dated December 14, 1997 at Summerfield Suites. Applicant's Exhibit 41. He contends that these would have shown Ms. Perez Blackwell's fraudulent activity. The record reveals that Mr. Aleksey wrote defense Counsel in a letter dated March 27, 1998 that Ms. Perez Blackwell had a checking account in Beaufort and had written checks for "$947, $50, and $400 dollars" and requested that Counsel contact Summerfield Suites about it. Applicant's Exhibit 23-B. Applicant's Exhibit 41 consists of three checks written on the MCAS Beaufort FC account for $50, $400, and $964 to Summerfield Suites.[34]

The issue is whether Counsel was deficient in failing to follow-up on Mr. Aleksey request to investigate the checks written by Ms. Perez Blackwell to Summerfield Suites. Although not argued specifically in his memorandum, p. 7-9, 22, as a basis for raising issues concerning the MCAS Beaufort FCU checks of Ms. Perez Blackwell, presumably he asserts it should have shown further fraudulent activity of Ms. Perez Blackwell. As noted before, the information from Mr. Aleksey concerning the Beaufort checks were presented to Danetta from Mr. Sims' office in her report of the conference call, Applicant's 22, and the letter to Counsel, Applicant's 23(b), which referenced the Summerfield Suites matters. Clearly, Mr. Aleksey knew of the facts of the writing of the Summerfield Suites checks, had presented the circumstances to defense Counsel in his letters and defense Counsel, armed with that information, had a good faith basis to question Ms. Perez Blackwell about them.

[34] These items were materials SLED had received from Mt. Laurel Police Department. PCR R. 496. These were not located either in the Solicitor's or defense's file.

However, certain salient factors were unresolved in the Applicant's presentation. First, although the account had been closed - did Ms. Perez Blackwell know it was a closed account? Second, no charges or warrants were ever made against Ms. Perez Blackwell in the check matters. As noted, for impeachment purposes, Ms. Perez Blackwell had been impeached by her prior record.

Further, the fact that after giving the checks on December 14, Ms. Perez Blackwell remained in the hotel suites for a significant period of time defeats the claim that she was "avoiding apprehension." As Mr. Aleksey had clear knowledge of the checks, as revealed in Applicant's Exhibit 23-B, even to the extent of the amounts and ability to quote someone's driver's license number, reveal involvement in the activity, as well as his own knowledge - increasing his own motive to avoid apprehension in an equal amount to Ms. Perez Blackwell. As noted above, the motive to avoid apprehension was merely one factor of the many factors which Solicitor Bailey pointed to as a basis of Mr. Aleksey being the driver of the Mustang. The Applicant has failed to show, but for the presentation of the MCAS Beaufort FCU checks from Summerfield Suites (or others), there is a reasonable likelihood that the result of the proceedings, either in guilt or penalty would be different.[35]

4. Hamilton Township Bench Warrant

In support of showing a motive to avoid apprehension, the Applicant presented an arrest warrant for "contempt of court" in Hamilton Township Municipal Court in New Jersey.

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[35] Counsel Stone testified that he had reviewed a massive amount of paper from the Solicitor. PCR R. 989. Mr. Stone could not recall if he had seen various items, but did not think that those included a box of checks from either Beaufort MCAS or Summit Bank. PCR R. 990. Similarly, Counsel Sims was not clear that he had ever reviewed the checks and could not recall, despite the defense team notes of ever having heard of Summerfield Suites. PCR R. 496-503.

Applicant's Exhibit 79. The matter involves a May 19, 1994 traffic summons for operating a motor vehicle in a careless manner and a subsequent March 8, 1995 warrant for "contempt of court" issued by the Trenton Police Department "due to the unanswered traffic summons." Applicant's 79.

Defense Counsel could not be deemed deficient in failing to investigate or cross-examine on this matter. First, it occurred years prior to her association with Mr. Aleksey. Second, it was not included in any criminal record "rap" sheet provided either to the State or the defense. R. 1288-90. However, the record also reveals that the defense, at trial, was aware of the existence of traffic tickets after Solicitor Bailey advised the Court that Mr. Stone advised him that there were warrants on her that did not appear in the "rap sheet." R. 1288. Prior to Ms. Perez Blackwell's testimony, the following occurred:

> Mr. Sims: We have information on the name Gloryvee Rivera...Rivera was her married name...We have...maybe four copies of some warrants that are outstanding on her under the name Gloryvee Rivera...
>
> Mr. Sims: ...They are traffic violations that warrants were issued on 8/24/94 in Trenton, New Jersey....

R. 1288-89. The trial court inquired and was advised that they were all traffic tickets. The Court responded: "I will let him ask about a traffic ticket if he wants to." R. 1289.

The trial court then asked about whether Mr. Sims wanted to cross-examine her on an outstanding warrant for traffic tickets. R. 1290. Mr. Sims responded that he did not want to get into where they were going. The trial court then stated that he did not want them to disclose their strategy: "If it's her, I will permit it." The trial court confirmed it would let the defense after

being advised by the solicitor that Ms. Perez Blackwell had no recollection of the speeding tickets, although it was her name and address. R. 1294.

During the Solicitor's direct examination he inquired about the fact of the possession of cocaine conviction and shoplifting convictions in 1991 and 1992. R. 1297. The following then occurred:

Q. - - - Have you ever had a speeding ticket?

A. I don't recall any speeding tickets.

Q. It is possible you had some and don't remember?

A. I just don't recall any speeding tickets.

R. 1297. Despite the professed knowledge of existing warrants for traffic violations in New Jersey, the defense did not inquire of Ms. Perez Blackwell about any traffic warrants that were still pending. R. 1310-14, 1328-42.

The defense, aware of the traffic warrants chose not to pursue those on cross-examination to suggest a motive for Ms. Perez Blackwell to run. However, the existence of the warrants since 1994 actually defeats the power of this motivating factor. This would suggest that Ms. Perez Blackwell had a motive to avoid apprehension since 1994 or at least 1995. Further, implicitly the defense apparently did not see the utility in presenting the known warrants to Ms. Perez Blackwell to either impeach her lack of knowledge or to suggest motive.

The failure of the defense to use the known traffic violations (or locate the 1995 contempt of court citation) does not undermine confidence in the outcome under Strickland, supra. Importantly, the jury was advised by the Solicitor that other than for speeding tickets, Ms. Perez Blackwell did not have anyone looking for her. His claims otherwise are without merit.

5. **Failure to Present Testimony from Either Elizabeth or Marcus Blackwell Concerning Ms. Perez Blackwell**

The Applicant contends that defense Counsel erred in failing to call either Ms. Perez Blackwell's estranged husband, Marcus Blackwell, or his mother, Elizabeth Blackwell. In support of his claim he asserts, based upon Applicant's Exhibit 25, that Marcus Blackwell would have testified about two instances during their marriage when Ms. Perez Blackwell exhibited a violent temper. Particularly, he averred that Ms. Perez Blackwell had "a violent temper and an untruthful character." Applicant 25. He stated on one occasion she was shooting a pistol in the neighborhood and during an argument following a dinner, she kicked the automobile windshield hard enough to crack it. The record also reveals that Mr. Stone's paralegal, Tina Lawring, met with Marcus Blackwell and earlier his investigator met with him.

During the PCR hearing, Counsel Stone testified that during their case against Ms. Perez Blackwell, the defense intended to present information that she shot at an ex-husband, kicked out his windshield, and had a volatile temper. PCR R. 1170-71. Mr. Stone stated that Judge Cottingham would not let them go into that matter to establish she could handle a gun. PCR R. 1171. Mr. Stone noted that the defense had testimony from some of the witnesses to establish that she had fired a gun, had a volatile temper, and had experience in the drug trade. PCR R. 1171. Mr. Stone stated that the defense did not call Marcus Blackwell concerning the opinion that Ms. Perez Blackwell had an explosive temper because Judge Cottingham had not allowed them to develop similar testimony on cross-examination of Ms. Perez Blackwell. PCR R. 1234. Counsel Stone rejected current Counsel's suggestion that had he proffered Marcus Blackwell's testimony to Judge Cottingham, he would have allowed Counsel to ask Ms. Perez Blackwell the questions about her temper. PCR R. 1234-35.

Similarly, Thomas Sims testified that they spoke with Marcus Blackwell and chose not to use him at trial. PCR R. 347. Just as Mr. Stone indicated, Mr. Sims stated that the reason they brought Mr. Blackwell to testify was regarding the issue of Ms. Perez Blackwell's violent temper. PCR R. 348. Mr. Sims believed that the defense had developed a sufficient record, without any proffer from Marcus Blackwell, about Judge Cottingham's refusal to allow the development of the evidence through Ms. Perez Blackwell. PCR R. 349.

Mr. Sims asserted that, although Judge Cottingham never prohibited them from presenting Marcus Blackwell, it was clear from his ruling that he would not allow information regarding the violent nature of their domestic relationship. PCR R. 349-51.

The record supports Counsel's recollection of Judge Cottingham's determination. During Ms. Perez Blackwell's cross-examination by Mr. Sims, an in camera proceeding was held. R. 1321. Mr. Sims indicated to Judge Cottingham his intent to show Ms. Perez Blackwell's explosive and violent temper, including the fact she kicked out her husband's windshield and had experience with a semi-automatic weapon. R. 1321-22. Judge Cottingham allowed the defense to ask Ms. Perez Blackwell whether she had shot a gun before and left open the potential impeachment with her husband's testimony. However, he stated, "We are not going into kicking any windows out in a domestic dispute.". R. 1323.

Counsel Sims then asserted such evidence should be admissible under SCRE 405 concerning character and reputation. R. 1323. Judge Cottingham plainly stated "clearly you are not entitled to this. I will not let you do it. Period." R. 1323. "We are not going into her divorces...we are not going to talk about kicking out the window..." R. 1324. Counsel Sims then declared "in regard to the domestic information, her attitude and the violent temper that we want

to point out, we think it is germane to our case and that we should be able to proffer that so that the record would be clear." R. 1325.

At that point, in camera, Ms. Perez Blackwell testified that she did not kick out the window, but "I kicked it and it cracked." R. 1326:5-8. However, during the proffer, she denied shooting Marcus Blackwell's gun and denied having the gun on his bed with the bullets surrounding it when he came home. R. 1326-27.

Before the jury, Mr. Sims continued to ask Ms. Perez Blackwell questions about Marcus Blackwell and the fact he owns a semiautomatic gun. R. 1328-29. She declared she had never held Marcus Blackwell's weapon and "I never shot the weapon." R. 1329.

This Court finds that the defense was not deficient in failing to further attempt to present testimony from Marcus Blackwell about Ms. Perez Blackwell's violent temper based upon cracking the windshield. Plainly, the defense could reasonably rely upon their proffer of the testimony.

The only issue left available would be a potential impeachment of her testimony that she never held Marcus Blackwell's gun or fired it. R. 1329. In Mr. Blackwell's affidavit, he states "Gloryvee was shooting a pistol in our residential neighborhood", but does not state it was his pistol. Applicant's 25. Further, Applicant's 64, Tina Lawring's summary of her conversation with Marcus Blackwell does not indicate that Ms. Perez Blackwell ever shot his weapon, only that he would hide his gun in his home and that she would find it and hide it and one time it was on the bed with bullets around it. Judge Cottingham left open the question on whether Mr. Sims could impeach her with her husband's testimony concerning shooting a gun. R. 1322-23. However, Counsel declared they made the choice not to call Marcus Blackwell as a witness after

their discussion. This Court concludes that that Applicant has failed to show either deficiency or prejudice.

Similarly, Applicant contends that Marcus Blackwell should have been called to state that "Gloryvee claimed that she and her sister, Dominga Perez, looked so much alike that they could pass for twins." Applicant's 25. He contends this information could have been used to suggest that Ms. Perez Blackwell, like Mr. Aleksey, also used fake identities because she possessed her sister's identification at the time of her arrest. However, the record revealed Mr. Sims pointed out the fact that Ms. Perez Blackwell used many names and possessed many ID's based upon her marriages including Rivera, Perez, and Blackwell. R. 1312. She had five identifications in her possession at the time of arrest, including one that did not belong to her. R. 1313. On re-direct, Ms. Perez Blackwell stated that each of her ID's reflected the name she had at the time and denied the use of any aliases. R.1344. Counsel Sims stated that Marcus Blackwell never told them anything about Ms. Perez Blackwell or her sister looking like twins. PCR R. 351-52. Further, he stated he did not recall asking Marcus Blackwell whether Ms. Perez Blackwell would use a fake ID or what the significance of Dominga Perez might be.

The Applicant attempts to assert that Ms. Perez Blackwell's possession of her sister's identification revealed an attempt to use an alias. See Applicant's 24. However, equating the possession of her sister's identification with use as a fake ID, without more is inadequate. As Mr. Sims states, he attempted to impeach her with the use of the various names. The jury had knowledge that she possessed another's identification. R. 1313. There was no error in failing to

call Blackwell to assert Ms. Perez Blackwell stated her sister looked like her twin. The claim otherwise must be dismissed.[36]

The Applicant also contends that the defense should have called Elizabeth Blackwell, Marcus Blackwell's mother, to testify that Ms. Perez Blackwell's daughter, Gloria Maria Rivera, had told her after the incident that she woke up when she heard shooting and "Mommy told me Michael was driving." Applicant 27. She also felt that Ms. Perez Blackwell was not a truthful person. Id.

Mr. Sims stated he met with Elizabeth Blackwell. PCR R. 647. Mr. Sims recalled, upon review of his notes, Elizabeth Blackwell telling him that Gloria Maria told her she woke up when she heard the shooting. PCR R. 697. Mr. Sims felt he cross-examined Gloria Maria on the fact she woke up when the shooting occurred and the fact that she had time to talk with her mother in the interim after the incident. PCR R. 697-98. Counsel Stone stated that they developed the fact from the police officer that Gloria Maria was left alone with her mother after the incident prior to anyone speaking with her. PCR R. 1196.

The record supports these recollections. First, Mr. Sims cross-examined 8 year old Gloria Maria Rivera. R. 1375-80. Mr. Sims developed from her that after they got out of the car when Mr. Afeksey put the gun to his head, she was with Ms. Perez Blackwell and her sister before they put them in a car. R. 1376-77. She confirmed that they waited awhile and then were taken somewhere else. She said she talked to some men and talked with her mother also. R. 1377. She denied talking to her mom between the time they talked to her the first and second

[36] The Applicant claims that the twin comment put Ms. Perez Blackwell on the same ground as his use of multiple aliases and adopting of the women's names. Simply put, these names belong to Ms. Perez Blackwell. Mr. Afeksey's never did.

times. R. 1378-79. Mr. Sims developed that subsequently she went to live in North Carolina with her grandmother and talked to her about what happened that night. R. 1379. She said she subsequently went home to her mother and that they had talked about what happened that night. R. 1449, 1451-52 (Darnell gets Ms. Perez Blackwell and daughter out of back seat of Cpl. Anderson's car). Although he did not develop the "Mommy told me" Mr. Aleksey was driving scenario, clearly the 8 year old child could have been aware who was driving when woken up by the gunshot from the car. The defense adequately developed the influence her mother could have had upon the child's testimony. In his closing statement, Mr. Sims emphasized the fact that Ms. Perez Blackwell was alone with her child after the incident and strongly suggested Gloria Maria had been coached from January until she testified. R. 1779-80. Counsel was not deficient in deciding not to present Elizabeth Blackwell's hearsay testimony about what Gloria Maria told her about the incident.[37] Applicant fails in his burden of proof to show either deficient performance of prejudice.

6. **Ms. Perez Blackwell's Ability to Cut a Deal**

The Applicant contends that defense Counsel was ineffective for failing to impeach Ms. Perez Blackwell concerning her ability to cut a deal and shift blame to others. Particularly, he notes that Counsel should have investigated the circumstances surrounding her conviction in Trenton, N.J. to learn that she negotiated in return for her plea and agreement to provide

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[37] In Applicant's PCR Exhibit 64, the notes of Tina Lawing to Counsel Stone reflect that Elizabeth Blackwell had talked to Gloria Maria Riveria while in her custody and asserted that Gloria Maria told her she was asleep and did not see anything and was protective of her mother. She told them that Gloria Maria told her that her mother said Michael (Aleksey) shot the cop. PCR R. 1010-1013 (The PCR transcript at the location refers to her as Gloria Maria Riveria).

testimony against her mother (Gloria Perez), the dismissal of nine (9) other felony drug indictments. Applicant Exhibit 37 (Dec. 9, 1991 Plea). He further contends that further investigation into Dr. Bang's check thefts would have revealed that Ms. Perez Blackwell initially denied taking or depositing the checks and stated that "a guy she had been seeing for approximate 2 weeks was at the office on 12/23/97 and that he [Michael Tosconi] must have stolen the checks without her knowing it." Applicant's Exhibit 31, 34. The Applicant contends that if this investigation would have occurred, particularly involving the drug charges, the defense would have been able to use the charges to impeach Ms. Perez Blackwell Perez, pursuant to SCRE Rule 608(c). Admissibility of the charges was denied by Judge Cottingham. R. 1316-17. Mr. Aleksey contends such evidence would have been admissible, relying on State v. Jones, 541 S.E.2d 813. 817 (S.C. 2001). He further contends Sixth Amendment prejudice was shown because Ms. Perez Blackwell's credibility was a central issue and rather than being impeached with only one conviction, this would have impeached her with "blame shifting and a motive to misrepresent." Applicant's Memo., p. 25.

Counsel Stone testified that he was aware that Ms. Perez Blackwell had a drug conviction for possession cocaine, but what he thought was important was that she was charged in the indictments with her mother. PCR R. 1169. He said her mother ended up going to prison, yet Ms. Perez Blackwell received a probationary sentence. PCR R. 1169. He asserted that Ms. Perez Blackwell had cut a deal against her mother. PCR R. 1170.

Mr. Stone further indicated that if they had the transcript of Ms. Perez Blackwell's 1991 plea transcript, that he did not feel that it would have made a difference with Judge Cottingham, but it may have helped. PCR R. 1237, 1239-41; see R. 1316-17.

Mr. Sims stated that at the trial they wanted to show that Ms. Perez Blackwell would cut a deal on her mother and her husband. PCR R. 445-46. Mr. Sims felt Judge Cottingham would only let in the conviction to impeach, not the dismissed matters under Rule 609. PCR R. 446. Counsel Sims conceded that he had urged the trial court to allow the admission of the dismissed charges to reveal that Ms. Perez Blackwell was able to make deals and implicate others. PCR R. 451. Mr. Sims asserted that Judge Cottingham was not made fully aware of the New Jersey guilty plea which included the fact the prosecutor's recommendation for a non-custodial sentence was conditioned upon Ms. Perez Blackwell "making a truthful statement implicating Gloria Perez." PCR R. 450-51. Mr. Sims noted however, that it did not say why the other charges were dismissed. PCR R. 451-52.

The right to meaningful cross-examination of an adverse witness is included in the Sixth Amendment right of confrontation. State v. Smith, 315 S.C. 547, 446 S.E.2d 411 (1994). The trial judge retains wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on cross-examination based on concerns about harassment, prejudice, confusion of issues, witness safety or interrogation that is repetitive or only marginally relevant. State v. Smith, supra. Before a defendant can be prohibited from attempting to demonstrate bias, the record must clearly show that the cross-examination is somehow inappropriate. State v. Smith, supra; State v. Graham, 314 S.C. 383, 444 S.E.2d 525, 527 (1994).

In denying relief in the direct appeal concerning the failure to assert the same suggestion, the South Carolina Supreme Court stated:

> Blackwell testified for the State as an eyewitness to the trooper's death. Appellant sought to cross-examine Blackwell concerning her indictments on ten separate narcotics charges. Blackwell had pled guilty to one indictment, possession of cocaine, and the other

> nine indictments were dismissed. The trial court refused to permit appellant to cross-examine Blackwell concerning the dismissed charges, but permitted appellant to proffer the questions for the record. During the proffer, Blackwell answered "I don't recall" to each of appellant's questions concerning the dismissed indictments.
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> The right to a meaningful cross-examination of an adverse witness is included in the defendant's Sixth Amendment right to confront his accusers. State v. Smith, 315 S.C. 547, 446 S.E.2d 411 (1994). This does not mean, however, that trial courts conducting criminal trials lose their usual discretion to limit the scope of cross-examination. See State v. Lynn, 277 S.C. 222, 284 S.E.2d 786 (1981) (a trial court's ruling concerning the scope of cross-examination of a witness to test his credibility should not be disturbed on appeal absent a manifest abuse of discretion). On the contrary, "trial judges retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, witness' safety, or interrogation that is repetitive or only marginally relevant." Delaware v. Van Arsdall, 475 U.S. 673, 679, 106 S.Ct. 1431, 89 L.Ed.2d 674 (1986).
>
> The trial court did not abuse its discretion in limiting the scope of cross-examination to comply with the South Carolina Rules of Evidence. Rule 609 permits impeachment of a witness by evidence of conviction of certain crimes. Rule 609, SCRE. Prior bad acts which are not the subject of conviction, such as the dismissed indictments here, may only be inquired into, "in the discretion of the court, if probative of truthfulness or untruthfulness." Rule 608(b), SCRE. Narcotics offenses are generally not considered probative of truthfulness. See, e.g., United States v. Turner, 104 F.3d 217, 223 (8th Cir.1997) ("Misconduct involving violations of narcotics laws is not an act involving dishonesty or untruthfulness and therefore may not be inquired into under Federal Rule of Evidence 608(b)."). **Nor are the dismissed indictments evidence of "bias, prejudice or any motive to misrepresent" under Rule 608(c).** The trial court properly limited the scope of cross-examination to Blackwell's actual convictions.

Aleksey, supra, at 255 (emphasis added).

The Applicant relies upon State v. Jones to support his assertion that further development of the record in the proffer to include the 1991 guilty plea would have revised the matter and allowed admission. The Applicant misreads Jones. In particular, in Jones, the Court distinguished Aleksey:

> In State v. Aleksey, supra, the defendant sought to impeach an eyewitness about specific charges which had been dismissed against her in New Jersey. That witness was neither the self-confessed accomplice to the murder for which the defendant was on trial, nor was there any evidence of her participation in the crime other than a retracted confession by the defendant. Obviously, there was no connection between the prosecutor's office in New Jersey which had dismissed the charges and the solicitor's office which was prosecuting the defendant.
>
> In this case, appellant sought to explore past dealings between Brown and the office prosecuting the current charges, not to impeach Brown through those dismissed charges, but rather to expose Brown's bias and prejudice in the present case. This excluded evidence had "a legitimate tendency to throw light on the accuracy, truthfulness, and sincerity" of Brown's testimony. State v. Brewington, supra. We hold the trial judge committed reversible error under Rule 608(c) in refusing to permit appellant to conduct this cross-examination. In light of this holding, we need not reach appellant's argument that he should have been permitted to cross-examine Brown about the dismissed charges under Rule 608(b), SCRE.

State v. Jones, 343 S.C. 562, 571, 541 S.E.2d 813, 817-18 (2001).

Here, this Court finds that Counsel Stone's assessment that the addition of the 1991 transcript would not have assisted the defense in having the matter presented to the jury. The plea reflected there was a negotiated non-custodial sentence recommendation conditioned upon Ms. Perez Blackwell testifying against her mother, but again, does not suggest why the other charges were dismissed. As the opinion set out, "[n]or are the dismissed indictments evidence of "bias, prejudice or any motive to misrepresent" under Rule 608(c)." Aleksey, 343 S.C. at 34.

538 S.E.2d at 255. Jones provides no solace to Mr. Aleksey in this instance because as Jones noted, they were dealing with the same prosecutor whereas in Aleksey, there is no connection with New Jersey.

Even if Counsel should have presented this additional information to Judge Cottingham, he failed to prove 6th Amendment prejudice under Strickland. Assuming the impeachment would be allowed, confidence in the outcome is not undermined. Any error in exclusion of proper impeachment evidence is subject to a harmless error analysis under the various factors of Delaware v. Van Arsdall, 475 U.S. 673 (1986), including: the importance of the witness' testimony to the prosecution's case, whether the testimony was cumulative, whether other evidence corroborates or contradicts the witness' testimony, the extent of cross-examination otherwise permitted, and the overall strength of the State's case. State v. Johnson, 334 S.C. 78, 512 S.E.2d 795 (1999); State v. Mitchell, 330 S.C. 189, 498 S.E.2d 642 (1998); State v. Cooper, 312 S.C. 90, 439 S.E.2d 276 (1994) (any error in excluding prior bad acts of witness held harmless where witness impeached by admission of numerous prior convictions and acknowledge he gave testimony in exchange for favorable treatment on pending charges); State v. Holmes, 320 S.C. 259, 464 S.E.2d 334 (1995) (any error in refusing to allow defense to impeach witness with "peeping tom" conviction was harmless); State v. Smith, 315 S.C. 547, 446 S.E.2d 411 (1994) (erroneous limitation on impeachment of eyewitness who had pending charges against him for intent to distribute crack and possession and intent to distribute crack within one-half mile of school was harmless error where another eyewitness testified about the event in detail and also corroborated by pathologist and police and witness admitted being under charges for another crime).

Here, the witness was otherwise impeached by the admission evidence of the prior shoplifting and possession of cocaine convictions. The probative value that the Appellant sought to show the jury from the nine (9) dismissed counts was not that she was guilty of the offenses, but that she had previously received "a good deal". This confusing assertion did not go to her "truthfulness" and could only lead to jury confusion on the collateral issue. He further asserts that the state misportrayed her as a "simple user of cocaine" when the dismissed charges suggest more involvement. The problem with this approach is the facts that these charges were dismissed.

This Court further finds that Counsel was under no Sixth Amendment duty to present evidence that Ms. Perez Blackwell implicated Mr. Aleksey when initially questioned about the thefts at Dr. Bang's office. First, the defense apparently knew from Mr. Aleksey that he was involved in the theft and proceeds from the stolen checks from Dr. Bang. PCR R. 920, 924, A-22 ("when Gloria and him were together she took two checks from her job")[38]; see also PCR 328. Counsel recalled sending an investigator to Pennsylvania to reveal Ms. Perez Blackwell's background, but did not recall the results of the investigation concerning Dr. Bang. PCR R. 921. Further, Counsel had checks from Dr. Bang in their files. PCR R. 413-14. However, Mr. Stone recalled that Ms. Perez Blackwell got fired because she had stolen the checks. PCR R. 960. However, he had never seen the incident report, Applicant's Exhibit 34, which implicated Mr. Aleksey (Tosconi) in the theft. PCR R. 950, 953-54.

Additionally, Sixth Amendment prejudice is not proven by the failure to present evidence that Mr. Aleksey was implicated as the thief of Dr. Bang's checks by Ms. Perez Blackwell. First,

[38] The Court understands the reference to Gloria in the interview is in fact a reference to Ms. Perez Blackwell.

the accusation may not have been false based upon Mr. Aleksey's written comments about his knowledge and participation in the depositing of the checks. The question further was of limited probative value where Mr. Aleksey remained involved with Ms. Perez Blackwell subsequent to the December 24 thefts until his arrest. Further, the attempt to present the limited evidence that Ms. Perez Blackwell had implicated him could have easily been excluded as "confusing" under SCRE Rule 403 since proof of his involvement might have been at issue. The defense theory that Ms. Perez Blackwell would turn on her mother to avoid imprisonment, a matter not admitted, is not dissimilar from her assertion that Mr. Aleksey stole the checks. Adding this element does not undermine confidence in the verdict. The Applicant has failed in his burden of proof to suggest they would. Relief on this basis must be denied.

7. **Ms. Perez Blackwell's Alleged Inconsistent Statements**

The Applicant further contends that Counsel was ineffective in failing to point out inconsistencies between Ms. Perez Blackwell's statement to SLED [Applicant's 42,-A, 42-B, and 43] and her trial testimony. Particularly, he initially contends Counsel should have challenged Ms. Perez Blackwell's statement that she was ignorant of Mr. Aleksey's "criminal record", when she had been an accomplice of his in a month long spree. Second, he contends that in her statement she indicated that she had "nowhere to stay" at the time and that she did not have a present address but could call people and stay with them. Applicant Exhibit 42-B, p. 2-3. At trial, she testified on cross-examination by Mr. Sims that she was staying with her best friend, but she had problems, and Mr. Aleksey offered to get her out of that situation so she moved in with him about a week and one-half after meeting him. R. 1329-30; see also R. 1299:4-7. The

Applicant asserts that evidence of homelessness and the issue of custody of her children assert a need to avoid apprehension for fear of losing her children.

At the PCR hearing, Counsel Stone stated that the current suggestion to specifically cross-examine Ms. Perez Blackwell by contrasting the statement and her testimony about where she was living did not impress him as something she should be examined on. Mr. Stone said he did not think that attempting to show she was homeless rather than staying with friends would have helped the case. PCR R. 998-99; see also PCR 506-13 (Mr. Sims' testimony).

This failure to re-develop this inconsistency was not ineffective. Counsel clearly had possession of her statements where she declared that she had nowhere to stay. PCR R. Applicant's Exhibits 42-A, 42-B, 43. During Ms. Perez Blackwell's testimony, Counsel Sims questioned Ms. Perez Blackwell asserting "you had no place to stay?" R. 1329:22. She then described her travels, from friend to friend, hotel to hotel. R. 1329-31.

Cross-examination, as noted previously, is a matter vested in the strategic discretion of trial Counsel. While the inconsistency was evident, the jury could have made the same recognition that current Counsel did because the information was before them. Although the inconsistency was not emphasized, Mr. Sims continued to develop the fact that she had given more than one statement. R. 1340-42; see also R. 1335.

Cross-examination must be objectively unreasonable in order to support a Sixth Amendment violation; an attorney's decision about the extent of cross-examination and refraining from certain lines of inquiry is entitled to great deference. Dows v. Wood, 211 F.3d 480, 487 (9th Cir. 2000); Phoenix v. Matesanz, 233 F.3d 77, 83 (1st Cir. 2000) (choice of emphasis in cross-examination is prototypical example of strategy). The question is not whether

the prosecution witness was attacked on every conceivable point, but whether the testimony was subjected to adversarial testing. Johnson v. Nagle, 58.F.Supp.2d 1303, 1355, n.42 (N.D. Ala. 1999). The Applicant has shown neither deficient performance nor prejudice.[39]

C. Brady Issues

Suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution. State v. Taylor, 333 S.C. 159, 508 S.E.2d 870 (1998) (citing Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963)); Gibson v. State, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999). Brady only requires disclosure of evidence that is both favorable to the accused and material to guilt or punishment. Taylor, 333 S.C. 159, 508 S.E.2d 870 (citing United States v. Bagley, 473 U.S. 667, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985)).

A Brady claim is based on the requirement of due process. To establish a due process violation, an accused must demonstrate that the evidence was (1) favorable to the accused: (2) in the possession of or known to the prosecution; (3) suppressed by the prosecution; and (4) material to guilt or punishment. Gibson at 524, 514 S.E.2d at 324 (citing Kyles v. Whitley, 514 U.S. 419, 432-42, 115 S.Ct. 1555, 131 L.Ed.2d 490 (1995); Brady, 373 U.S. at 87, 83 S.Ct. 1194; State v. Von Dohlen, 322 S.C. 234, 241, 471 S.E.2d 689, 693 (1996)); State v. Jarrell, 350 S.C. 90, 107, 564 S.E.2d 362, 372 (Ct.App. 2002) (cert. denied). The rule applies to

[39] In this section, Mr. Aleksey asserts that defense Counsel should have brought up on cross-examination Ms. Perez Blackwell's comment in the statement that she was not aware of Mr. Aleksey's criminal record. Remarkably, he asserts this should have been impeached because subsequent to her companionship with Mr. Aleksey she had seen him go on a crime spree.

impeachment evidence as well as exculpatory evidence. Gibson at 524, 514 S.E.2d at 324 (citing Bagley, 473 U.S. at 676, 105 S.Ct. 3375).

There are three categories of Brady violations: (1) cases involving nondisclosed evidence or perjured testimony about which the prosecutor knew or should have known; (2) cases in which the defendant specifically requested the nondisclosed evidence; and (3) cases in which the defendant made no request or only a general request for Brady material. Gibson at 524-25, 514 S.E.2d at 325 (citing United States v. Agurs, 427 U.S. 97, 96 S.Ct. 2392, 49 L.Ed.2d 342 (1976)). Such evidence is material "if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Kyles v. Whitley, 514 U.S. 419, 433-34, 115 S.Ct. 1555, 131 L.Ed.2d 490 (1995). Moreover, the rule encompasses evidence "known only to police investigators and not to the prosecutor." Id. at 438, 115 S.Ct. 1555. In order to comply with Brady, therefore, "the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in this case, including the police." Kyles, 514 U.S., at 437, 115 S.Ct. 1555; see also Strickler v. Greene, 527 U.S. 263, 280-81, 119 S.Ct. 1936, 144 L.Ed.2d 286 (1999). A "'reasonable probability' is a probability sufficient to undermine confidence in the outcome." Id. Thus, although

> the term 'Brady violation' is sometimes used to refer to any breach of the broad obligation to disclose exculpatory [or impeachment] evidence--that is, to any suppression of so-called 'Brady material'--... strictly speaking, there is never a real 'Brady violation' unless the nondisclosure was so serious that there is a reasonable probability that the suppressed evidence would have produced a different verdict.

Strickler, 527 U.S. at 281, 119 S.Ct. 1936. For the reasons set forth below, Mr. Aleksey has failed in his burden of proof.

1. **The Dr. Bang, Summit Bank, Lincoln Scam**

As set out above, evidence existed of a joint scam with Mr. Aleksey and Ms. Perez Blackwell involving the theft and use of checks from Dr. Bang's office to attempt to secure monies to purchase a Lincoln. Under the defense theory this evidence undermined the credibility of Ms. Perez Blackwell and the prosecution's assertion that Ms. Perez Blackwell, unlike Mr. Aleksey lacked any motive to flee, suggesting that Mr. Aleksey was the driver.

The Applicant contends that the prosecution had sufficient awareness of the scam to require the State to both investigate the incident and then reveal the fruits of the investigation. The Applicant bases this assertion on the generalized knowledge Solicitor Bailey admitted of the scam. PCR R. 1705. Mr. Aleksey further points to Solicitor Bailey's remark that during the PCR he understood Ms. Perez Blackwell had worked for Dr. Bang and "stole some checks while she was employed there." PCR R. 1280:7-10. Solicitor Bailey stated that he provided checks from Dr. Bang to defense Counsel which were found in the Mustang. PCR R. 1282-86. Contrary to the Applicant's assertion though, Solicitor Bailey disagreed that the mere possession of the checks from Dr. Bang's office in the Mustang would have triggered in his mind that the checks were fraudulent or that there was anything wrong with the checks.

Solicitor Bailey stated when he initially interviewed Ms. Perez Blackwell after her release prior to trial, she was unemployed, but planning to return to work at a medical office. His notes of the interview did not include any reference to her prior employment. PCR R. 1289-92.

SLED Agent Darnell testified that he was aware that Ms. Perez Blackwell had been fired from her job. PCR R. 1633. Agent Darnell testified that he had some familiarity with the fact

that "they" did not pick up a vehicle because the check did not go through. PCR R. 1634. He vaguely remembered something about Ms. Perez Blackwell opening an account with a forged check. PCR R. 1634. Like Solicitor Bailey, Agent Darnell had no recollection of ever going over the matters related to the doctor's check, motel receipts, and the Lincoln with Ms. Perez Blackwell. PCR R. 1643-44. Agent Darnell denied, in his mind, it could be a motive and stated that he did not see what that had to do with Sergeant Lingard's death. PCR R. 1644.

The record reveals that the checks found in the vehicle were disclosed to the defense. See Clerk of Court Records, July 23, 1998 Letter from Solicitor Bailey to Mr. Sims, Mr. Stone, item 8, 9, 10.

As noted above, defense Counsel, through Mr. Aleksey, knew of the existence of the alleged scheme to purchase the Lincoln through the forged use of stolen checks by Mr. Aleksey and Ms. Perez Blackwell. Under Brady, the duty to disclose is required for any impeaching or exculpatory material. Respondents acknowledged the scam would be impeaching of Ms. Perez Blackwell as a dishonest act. However, these facts were known by the co-conspirator, Mr. Aleksey, who revealed them to the defense.

Applying the same test as ineffective assistance of Counsel for prejudice whether there is a reasonable probability the result of the proceeding would have been different, the Court finds that Applicant has failed in his burden of proof.

2. The Penske Rental Document

The Applicant contends that the State had a duty to disclose the Penske Rental Reservation document. Mr. Aleksey asserts it would reveal a different destination that Disney World, to wit West Palm Beach and imply a permanent move rather than a vacation. Applicant's

Memo., p. 14. The problem with this claim is that the document was disclosed to the defense. The Applicant proved that it was present in the photographs of the vehicle which were presented to defense Counsel in discovery. Since it was disclosed to the defense, Applicant has failed to show any violation of Brady, supra.

Further, as noted above, Mr. Aleksey was personally aware of the communication with Penske rental. Not only was the document present in the vehicle he packed and was driving, he indicated to his defense Counsel a desire that they independently contact Penske rental.

For the same reasons as with the prejudice prong for ineffective assistance, the Applicant failed to prove materiality under Kyles. See also PCR R. 1298, 1302-03 (Solicitor Bailey noted Applicant Exhibit 77 - photograph reveals Penske brochure), 1547-50, 1626-29.

3. **Miscellaneous Comments**

The Applicant also contends that Solicitor Bailey made false comments to the jury or presented false evidence in violation of Giglio v. US, 405 U.S. 150, 92 S.Ct. 763 (U.S. 1972), and Napue v. Illinois, 360 U.S. 264, 269-70, 79 S.Ct. 1173, 3 L.Ed.2d 1217 (1959). The Applicant has failed in his burden of proof. As noted previously, one of Solicitor Bailey's arguments was that nobody was looking for Ms. Perez Blackwell "other than for a couple of speeding tickets." R. 1753. In addition to the claimed scheme to steal checks from Br. Bang and acquire the Lincoln through the use of a forged check, Mr. Aleksey claims that a further scheme to write checks for Summerfield Suites on a closed account from Beaufort should have revealed someone was out looking for her. However, Mr. Aleksey was aware of those matters as set forth above.

Importantly, the fact that there was evidence from Applicant's Exhibit 41 from law enforcement about a complaint concerning the checks, but that there was no warrant made for arrest does not reveal automatically what the Applicant asserts. As Solicitor Bailey noted, it was not clear who closed the account or whether Ms. Perez Blackwell was aware the account had closed to prevent its use. Nevertheless, since solicitor's theory was there were no warrants, his theory was essentially correct. It was not materially false nor does this issue undermine confidence in the verdict.

The Applicant also claims the Solicitor's argument that Ms. Perez Blackwell did not know anything about Mr. Aleksey's past was a false statement.

The Applicant takes issue with the following comments by Solicitor Bailey:

> She got up here and testified under oath that she was a passenger in the car. She had just met this guy a few weeks earlier. She had poor judgment. She took up with this guy she had not known for too long. They are going down to Disney World. She doesn't know anything about his past. She doesn't even know his real name. She thinks he is, I think, Michael Toscani or Pivero or something. She knows him as Michael. She doesn't know who he is.

R. 1755-56. Mr. Aleksey now claims that Ms. Perez Blackwell knew who Mr. Aleksey was by her dealings with him in the four weeks she had spent with him.

The problem with the Applicant's assertion is that Ms. Perez Blackwell did not know anything about his past. It was not a false statement or argument, but evolved directly from both Ms. Perez Blackwell's statement and testimony and Mr. Aleksey's own statements to the police. As stated in the evidence, Ms. Perez Blackwell had just met Mr. Aleksey within one month of the incident. Also, she had known him through an alias rather than through his real name. Although the Applicant's evidence suggests that she was an always knowing pawn in the

fraudulent activity of Mr. Aleksey that does not suggest knowledge about his past. As stated above, "in order to prevail on a Giglio claim, a petitioner must establish that the prosecutor knowingly used perjured testimony, or failed to correct what he subsequently learned was false testimony, and that the falsehood was material." Tompkins v. Moore, supra. The Applicant has failed to show either materiality under Brady-Kyles or knowing use of false testimony under Giglio. Relief is denied on this ground.

4. **Hamilton Township Warrants (Applicant's Exhibit 79)**

As noted in the ineffective assistance of Counsel section, Solicitor Bailey was not aware of pending traffic warrants (nor any bench warrants for traffic citations) until the defense presented the matters to him at trial. R. 1288-90, 1297. Particularly, the criminal record sheets provided to Solicitor Bailey (and ultimately the defense) did not have this information. R. 1288. See Applicant's Exhibit 83, Item No. 50.[40] Further, at trial, upon inquiry of Ms. Perez Blackwell, she advised the prosecution and ultimately the court, under oath that she did not recall any speeding tickets. R. 1288, 1297.

The Applicant contends that the prosecution should have developed this information prior to trial. He bases this on the fact that SLED Agent Darnell contacted the Trenton Police Department about Ms. Perez Blackwell and that she worked and had a known criminal record for possession of drugs in Trenton. Applicant's Memo., p. 10; PCR R. 1632-33.

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[40] According to the Clerk Records, Ms. Perez Blackwell's rap sheet of eight (8) pages was faxed to Counsel Stone on May 22, 1998.

The Applicant has failed to prove a violation under Brady. First, Solicitor Bailey stated, consistent with his trial representations, that he had no recollection of ever seeing the information that there had been a "contempt of court" warrant for a pending traffic violation from 1994 pending at the time of the trial. PCR R. 1260:10-17. As Solicitor Bailey testified, he ran a "rap sheet" on her and there was nothing to indicate there were any outstanding warrants against her. He stated he would not have made the argument if he had been aware of the fact of the warrant and would have tailored his argument differently. PCR R. 1261. Solicitor Bailey also stated that when the traffic speeding violations independently discovered by the defense were brought to his attention, he only inquired of Ms. Perez Blackwell about her knowledge of the speeding tickets, but did not go beyond that question with the witness. PCR R. 1263-64, 1266-68. Solicitor Bailey confirmed that he did not talk with the Hamilton Township Police Department. PCR R. 1270. As Solicitor Bailey stated, "I don't know that I've got any duty to disclose to the defense something I don't know, but they know." PCR R. 1270.

The Applicant further relies upon testimony from SLED Agent Darnell. During the hearing, SLED Agent Mears testified that the rap sheet he reviewed did not reflect any pending arrest warrants for Ms. Perez Blackwell. PCR R. 1600-01. Further, Agent Darnell specifically reviewed Applicant's Exhibit 79 and declared he did not remember anything in his investigation about a bench warrant for contempt of court arising from his investigation in New Jersey. PCR R. 1642.

The Applicant has failed to show any Brady violation. As stated earlier, even if a prosecutor does not possess Brady material, he has a duty to learn of any favorable evidence known to other government agents, including the police, if those agents are involved in the

investigation. See Kyles v. Whitley, 514 U.S. at 437. However, the prosecutor does not have a duty to discover and disclose information held by other federal or local agencies that have no involvement in the investigation or prosecution at issue. U.S. v. Hawkins, 78 F.3d 348, 351 (8th Cir. 1996); Moon v. Head, 285 F.3d 1301, 1309-10 (11th Cir. 2002).

Here, Solicitor Bailey had no duty to disclose the Hamilton Township contempt of court warrant. First, he did not discover the matter during the running of the rap sheet. Second, the SLED agents, particular Agent Darnell, never learned of its existence during his search for information. Thirdly, there is no evidence anyone from SLED, the Highway Patrol, Orangeburg County, or the Solicitor's Office ever possessed this information. To the contrary, they were of the opinion it did not exist. Further, the Applicant's speculation that the mere fact that SLED or the Solicitor was aware that Ms. Perez Blackwell lived and worked in Trenton was enough to demand seeking and receiving this information is not sufficient to create a Brady duty to disclose. For this initial reason, the evidence does not establish a Brady violation.

Second, the defense already and independently had developed from their own investigation the existence of four traffic charges, apparently pending since 1994. The record reveals that the matters learned by the defense remained pending at the time of the 1998 trial. Since the defense was the actor that disclosed these matters to the prosecution, the defense was "on notice" of the existence that warrants for the failure to resolve the traffic warrants existed. Since the defense possessed that information, Brady was not violated based upon the defense team's actual knowledge. See U.S. v. Bender, 304 F.3d 161, 164 (1st Cir. 2002) (no Brady violation where defense on notice of information about witness' mental difficulties prior to testimony); U.S. v. Rodriquez, 162 F.3d 135, 147 (1st Cir. 1998) (no Brady violation in failure to

disclose tactics used to induce witness cooperation because defendant knew of witness' long criminal history). Here, the defense knew of pending traffic violations. The evidence, as revealed then and now, was equally available to the defense as to the state. As Exhibit 79 reveals, defense Counsel were able to acquire this information, independent of the prosecutor. Brady's duty to disclose has not been proven.

Further, the Applicant has failed to prove "materiality" of the information under Kyles. The record reveals that had the warrant been discovered, the prosecutor would have tailored his closing argument differently to the extent he would not be able to assert Ms. Perez Blackwell had no warrants pending against her. However, this slight change does not, to a reasonable probability, undermine confidence in the outcome of the case. The additional factors, noted by Solicitor Bailey, support the fact that Mr. Aleksey was the driver at the time of the shooting and the driver did not change during the post-shooting flight. Further, the failure of the defense to utilize the pending driving charges, which differ only slightly in degree to the "contempt", suggest the probative value of these matters were minimal.

As noted, Mr. Aleksey confessed to being the sole driver of the vehicle at the time of the shooting and confirmed Ms. Perez Blackwell's lack of knowledge in the incident. The power of the impeachment of Ms. Perez Blackwell was limited by the probative value of Mr. Aleksey's confession, his connection to acquire the gun independent of Ms. Perez Blackwell through Yelena Batkilina, his connection to acquiring the Mustang, independent of Ms. Perez Blackwell through Lisa Watson, and his history of deception with all who came into contact with him. The Applicant fails in his burden of proof.

SUMMARY ON GLORYVEE CLAIMS

With regards to Ground O, the Applicant claims he was denied the right to the effective assistance of Counsel during the guilt phase of trial. In his application, the Applicant addressed several specific instances of ineffective assistance of Counsel that support this ground, and this Court finds that each of the allegations presented to the Court by the Applicant rest entirely on tactical decisions made by trial Counsel. This Court finds that trial Counsel's strategic decisions were not deficient under Strickland, and therefore, the Applicant's application for PCR is denied with regards to each of these issues. Further, even if the Applicant successfully established his grounds for ineffective assistance of Counsel with regards to any of these allegations, this Court finds the Applicant has failed to establish prejudice to which he suffered as a result of the alleged violations considered either individually or collectively.

Specifically, in Ground Q(1), the Applicant maintains the prosecutor knowingly failed to disclose evidence of Ms. Perez Blackwell's motive and recent criminal activity and affirmatively misled trial Counsel regarding the existence and materiality of this evidence. This Court is constrained to find the Applicant has failed in his burden of proof with regards to this issue. It was revealed that the Applicant's trial Counsel knew of the existence of an alleged scheme to purchase a Lincoln through the use of stolen checks, as this was a scheme that was co-conspired to by Mr. Aleksey and Perez. Thus, the claims to which the Applicant asserts were claims that Counsel was aware. Further, the Applicant claims the State failed to disclose the Penske Rental Document to the defense. However, this Court finds that the Applicant failed in his burden of proof to show that he had no knowledge of such documents and that he failed in his burden of

proof to show that the state failed to disclose these documents. Accordingly, this Court finds that the Applicant has failed to establish a denial of due process.

MR. ALEKSEY'S CLAIMS INVOLVING MS. PIVERO, MS. WATSON, MS. BATKILINA, AND MS. FERRELL

SARA PIVERO CLAIMS

Ground O (5) **IAC - Guilt (failed to impeach)**

Trial Counsel failed to properly cross examine and impeach state's witness Sara Pivero. Counsel did not impeach witness with character evidence involving specific instances of prior dishonest conduct.

Ground O (9) **IAC - Guilt (failed to investigate)**

Trial Counsel failed to fully investigate the crime charged and the state's witnesses and to present that information to the jury in a coherent and meaningful manner.

Ground P (3) **IAC - Sentencing (failed to cross-exam and impeach)**

Trial Counsel failed to properly cross examine and impeach state's witness Sara Pivero. See Ground O, number 5.

Ground P (5) **IAC - Sentencing (failed to investigate background)**

Trial Counsel failed to investigate backgrounds of state's witnesses and their allegations. Such an investigation would have provided a substantial amount of impeachment material

Ground Q (3) **Brady - Failed to provide Ms. Pivero Statement**

The state knowingly failed to provide, to trial Counsel, a statement given by Sara Pivero to the agents of SLED.[41]

[41] This issue related to ineffective assistance of Counsel in failing to question either Agent Mears or Darnell about Ms. Pivero's statement. As revealed in Agent Darnell's testimony, there was no Ms. Pivero statement to reveal. PCR R. 1678-79. The allegation is without merit and must be dismissed.

In the claims related to Sara Pivero, Mr. Aleksey initially claims, in post-hearing pleadings for the first time, that the State violated the mandates of Brady v. Maryland, supra, by failing to disclose the fact that Ms. Pivero had given inconsistent statements to Solicitor Bailey and the Doylestown Police Department concerning who wrote the checks Mr. Aleksey or Ms. Pivero used for the down payment on the Lexus. He further contends that Counsel were ineffective in failing to impeach Ms. Pivero with her record and inconsistent statements she made concerning her involvement in the Lexus purchase. For reasons set forth below, the Applicant has failed to show entitlement to relief under either Kyles v. Whitley, supra, or Strickland v. Washington, supra.

A. Sara Pivero's Trial Testimony

1. Guilt Phase

Sara Pivero testified that she was 21 years old and employed as a hairdresser at Sensational Scissors for four years. R. 1606-07. She stated that she met Mr. Aleksey, then known as Michael Angelo, in May 1996 and developed a relationship with him. She stated they lived together as boyfriend-girlfriend until November 1996. R. 1608. She said he also used the name Batkilina and Michael Diangelo. Id.

She stated on January 2, 1998, she received a call on her cell phone and initially received a voice message from an operator about a call from a correctional facility and heard Michael's [Mr. Aleksey] voice say to call his mom. About 15 minutes later, she received a call around 8 pm and it was Michael. She stated he identified himself and said he was in jail in South Carolina. When she asked him what he did, he told her "that he shot a state trooper." R. 1611.

When she said "shot as in hurt", he said he doesn't know. He said to her he knew he was in trouble, but that "maybe it was for the better because he was tired of running." R. 1611.

Ms. Pivero stated she got another call from him that evening and he told her to call his mother and let her know what was going on. R. 1611. The next day, January 3, she received another call "and this time he was kind of frantic and said it wasn't him, it was Perez that pulled the trigger", although she did not know who Perez was. R. 1612. At that point, he had never told her anyone else was in the car and she did not know whether Perez was male or female. R. 1612.

On cross-examination, Mr. Sims attempted to question whether she might have heard "they said I shot the trooper", but she denied it because of what he said he did. R. 1613. She confirmed the next day he said "Perez pulled the trigger." R. 1613.

Mr. Sims developed that Ms. Pivero met Mr. Aleksey when she was driving with a girlfriend to Atlantic City and he was in a car next to them. R. 1613. She stated that they started talking at the casino, and they followed their meeting with phone calls over the next couple of weeks and then he moved in with her. R. 1614-15.

She said that Mr. Aleksey proceeded to spend a lot of money. She claimed he asked to borrow her money because he was in trouble and promised to pay her back. R. 1615. She thought he set up investments in her name, which never existed. She claimed her statement from her investment company revealed a zero account balance. R. 1615. She stated that the various account balances probably totaled $50,000. R. 1616.

Like Ms. Watson, Ms. Pivero stated Mr. Aleksey went to dealerships and picked out the car he wanted "and I put them in my name for him" because she had good credit and Mr. Aleksey claimed he had bad credit. R. 1616.

She stated she bought a 1996 Mustang which she wrote a check out for. R. 1616-17. She described a series of automobile transactions including obtaining a 1994 Eldorado Cadillac when he traded in her 1996 Jetta; and also he acquired a Red Passat. R. 1617. She stated that Mr. Aleksey told her that the payments were taken care of and she signed her name to the lease. R. 1617. Ms. Pivero stated that next was a 4-Runner that he had picked out. She said the paperwork was done and all she had to do after he handed her some cash was to sign the paperwork. She signed the papers and Mr. Aleksey drove off in his new car. R. 1618.

Next, after she had an accident and was driving a rental, Mr. Aleksey wanted her to get a new Jeep. She told him she could not make payments on it because she was 19, trying to make a mortgage and working as a hairdresser. R. 1618. He said he would help her, so she got the Cherokee with him and he helped by "using whatever means necessary." R. 1619.

Next there was a 76 Corvette Stingray for which she loaned him money. She said he then paid cash for it and sold it a couple of weeks later, keeping the money. R. 1619.

Concerning the Lexus, Ms. Pivero stated that she received a call to come to Thompson's Lexus in Pennsylvania and see the car and fill out the credit application. R. 1619. She stated she filled out the application and "reluctantly" wrote the check. R. 1619:20-1620:6. She said Mr. Aleksey told her the money would be in the account. R. 1620.

However, she said he had deposited "bad checks" into the account and her checks bounced. "I bounced a little over $8000 in checks to the Lexus dealership, which I am now paying them back monthly." R. 1620.

Ms. Pivero stated at that time they were still technically together, but it had been pretty rough. R. 1620. She stated he had been staying with other people. Also, that Mr. Aleksey was incarcerated and when he got out he stayed with her and a girlfriend about a month and one half.

She said she was out of money from investments that no longer were in existence. R. 1621.

On re-direct, Ms. Pivero indicated that she received the $50,000 from a severe car accident in 1995 from an insurance company due to the loss of a dear friend. She said she had invested in mutual funds, a money market account, and two IRA's. R. 1621-22. She said it was gone in about two months. R. 1622. She said that she was upset with him, but never left his side, had no reason to hurt him because he took her money, because it wasn't that important. R. 1622. She said she had never denied talking to him and that she had told the truth about the call. R. 1622.

On re-cross, Mr. Sims confirmed that the call was on the cell phone not the house phone. R. 1623.[42]

2. Penalty Phase

Ms. Pivero testified as a state witness in the penalty phase. Particularly, she stated Mr. Aleksey had a black Toyota Supra when she met him in May 1996. R. 1905. She had invested $75,000 in proceeds she had received in insurance from an automobile accident. R. 1905. She

[42] Ms. Pivero had testified earlier that she previously had given Mr. Aleksey her cell phone number. R. 1609.

stated, at Mr. Aleksey's instigation, she leased a Cadillac for him in her name. This was traded in for a Toyota 4-Runner for him in her name. Subsequently, there was a 1996 White Saline Mustang that he kept for around a month and one-half. R. 1906. Mr. Aleksey then traded in the 4-Runner for the Lexus LX 450. R. 1907.

Concerning the Lexus, Ms. Pivero stated that Mr. Aleksey wanted it. R. 1907. At the time, she was working as a hair stylist making $15,000. However, the Lexus cost around $60,000. R. 1907. The prosecutor introduced two checks that she said she made out: Exhibit 87 for $2060 on her bank account to Thompson Lexus for the start-up fees and first month's payment that she signed (R. 1908), and a second check she signed for $6,393 to pay off the 4-Runner in order to get the Lexus. R. 1909.

She said Mr. Aleksey wanted the Lexus. However, she was writing the checks because Mr. Aleksey told her that money was there, but the checks he was depositing into the account were "bad checks" and her account went negative a few thousand dollars. R. 1909.

Ms. Pivero identified a W-2 form that was faxed to the Thompson Lexus which indicated her income as being in excess of $78,000. She stated that she did not know how it came about and did not fill out the form. She stated she knew they asked for proof of income, but claimed she did not deal with them. "I only went there to sign the papers. I went there once to fill out the credit app and once to sign the papers." R. 1910. She stated again that she did not fill out a W-2 form. R. 1910:15-17. She stated she just signed the paperwork without looking at it. R. 1910.

Ms. Pivero said the two checks ended up bouncing, but claimed at the time she wrote the checks she thought they would clear. R. 1911. She said Mr. Aleksey had been depositing checks into the account, but it turned out they were bad. R. 1911.

Ms. Pivero stated she had a closed bank account with First National Bank. R. 1911-12. State exhibit 89 was an $18,014 check written to County Line Auto Sales dated August 1997. R. 1912. Ms. Pivero claimed this check was taken from her home where checks were kept. She identified Mr. Aleksey's handwriting on this check and forging her signature. R. 1912-13. She stated in August 1997, she had not talked with Mr. Aleksey for a couple of months and was unaware he was writing the check. R. 1913-14.

She stated Mr. Aleksey also got her mother's (Carol Pivero) credit card numbers and charged them for "a couple of thousand dollars." R. 1914.

Ms. Pivero also said at one time Mr. Aleksey had a Honda CVR 600 motorcycle that he claimed his girlfriend Theresa in New York purchased for him. R. 1914. She said she saw him dump it into a lake and he told her it was done "so it wouldn't be traced back to him." R. 1914-15.

Ms. Pivero described seeing Exhibit 5, a gun that he used to keep in a leather first aid box. She described in February 1997 when they got in an argument and threw her on the ground and put the gun to her forehead and said he was going to kill her. R. 1915. She said to pull the trigger because her life can't be worse, and he said "how could you do this to me, I love you." He then held the gun to his own head and said he was going to shoot himself and to walk out of the room. She said she would stay and Mr. Aleksey then curled up on the floor and fell asleep. R. 1916.

Ms. Pivero identified State's 56 which was a brown purse that belonged to Mr. Aleksey. She testified that she had seen it previously and it contained credit cards, Ids, and checks from his ex-girlfriend Theresa. The items had the names Theresa Fogle and Theresa McCann on

them. R. 1916-17. Subsequently, some of her friends said they saw her own checks in his purse. R. 1917.

In May 1996, Ms. Pivero asserted that she had a conversation with Mr. Aleksey where he claimed Theresa had taken money and other things from him and claimed that he would get even with her one day when she wasn't expecting it and blow up her car. R. 1917-18.

On cross-examination, Mr. Sims initially emphasized the gun event and that he did not pull the trigger on her and threatened to kill himself and asked her to leave, but when she refused he laid on the floor and went to sleep and said "he was afraid to lay next to me because he thought I would hit him." R. 1918-19. She described the event as scary, but she believed Mr. Aleksey would not pull the trigger on either. Ms. Pivero said that she felt he would not pull the trigger because they were in someone else's home with children. R. 1919-20.

Concerning the motorcycle, she said she knew he was going to ditch the motorcycle in advance and gave him a ride back. R. 1920.

Concerning the vehicle purchases, Ms. Pivero stated she really did not have a choice. She said Mr. Aleksey went to the dealerships and filled out the paperwork and "I trusted him so I signed." R. 1920. She said they were living together then and been dating for a while, so I trusted him. R. 1921. She thought it was odd how quickly he switched cars, but he seemed to love them and she didn't ask questions as long as the bills got paid. R. 1921. However, she stated:

> Unfortunately the bills were getting paid with his stolen credit cards, receipts and everything was kicking back and I was getting these lump sum bills for thousands and thousands of dollars. Not to mention rap sheets I have now, probation I'm on so I can pay back his car.

R. 1921. She said after Mr. Aleksey took off, she got a cell phone bill for $4,500.

Ms. Pivero stated at no time did she refuse to sign for the car because "he had the money up front." R. 1922. "He gave me the cash to go." Id. She said he never signed any of the documentation at the dealerships because he told her he had bad credit and had filed for bankruptcy, but needed a car and she was "trying to help him out." R. 1922.

B. Brady Claim

In Mr. Aleksey's brief, the sole claim he asserts arises from material disclosed after the evidentiary hearings were completed. The Applicant presents documents disclosed to the Attorney General on April 22, 2004 from the Doylestown Township Police Department as Applicant Exhibit 85, which supplements similar material received in court as Applicant's 55 that had been disclosed to defense Counsel on February 16, 1998 according to the transmittal letters in the Clerk's Office. However, Doylestown materials include a July 16, 1998 letter from Solicitor Bailey to Detective Dean Logan in which he states:

> During the penalty phase of the trial, I am going to call Sara Pivero with regards to her dealings with Bayan Aleksey. Ms. Pivero has advised me that Mr. Aleksey altered her W-2 as well as forged her signature as the maker of two checks payable to Thompson Lexus...

Applicant's 85. The proposed exhibit also includes the following July 23, 1998 report by Lt. Logan stating:

> On July 22, 1998, I picked up the original $6393.88 check from Jim Cousart of Thompson Lexus and made telephone contact with Walter Bailey in reference to the letter. I advised him of the information related to Pivero signing the checks rather than Mr. Aleksey as Pivero had informed him...

Applicant's 85 (Report Date 07-23-98).

During the trial, Ms. Pivero consistently maintained that she signed both checks to Thompson Lexus, consistent with the investigation and her earlier guilty plea. R. 1619-20 (cross-examination in guilt phase); R. 1908, 1911 (penalty phase).

The Applicant asserts that there was a Brady violation because the Solicitor never disclosed to either defense Counsel that Ms. Pivero at some time, had falsely indicated to him that Mr. Aleksey, rather than herself, had signed the Thompson Lexus checks. The Applicant contends that this inconsistent and false statement to Solicitor Bailey was impeachment material that should have been disclosed to the defense. Mr. Aleksey maintains that Ms. Pivero made a false statement to Solicitor Bailey, even though she testified during trial consistent with earlier statements, qualified as Brady material because it suggested that she would lie to a jury if she would lie to Solicitor Bailey.

Since this issue was raised after the PCR hearing, no testimony has been taken from either Solicitor Bailey, Mr. Sims, or Mr. Stone concerning the circumstances surrounding the alleged disclosure of either the July 16, 1998 letter from Solicitor Bailey or the information contained within the letter. The record does disclose that at some time Solicitor Bailey traveled north and interviewed Ms. Pivero, although he was unable to receive any written statement from her. PCR R. 1422, 1423, 1431. Assuming the letter is accurate concerning the comments of Ms. Pivero related to the authorship of the checks, and assuming the information was not disclosed, a new trial is not warranted because the prejudice - materials prong of Brady and Kyles v. Whitley has not been satisfied.

First, it is without dispute that her trial testimony, brought out by the defense initially in the guilt phase, that she signed both of the Thompson Lexus checks was true, as Applicant

presently concedes. Applicant's Memo., p. 30-31. Second, information revealed in Applicant's Exhibit 55 which was disclosed to the defense included the fact that Ms. Pivero was willing to make false statements to law enforcement officials about the circumstances of the Lexus transaction, including that Mr. Aleksey was her brother or half-brother, Michael Pivero; that she must have filled out the credit application since it was her handwriting and signature; and that she had used an erroneous address on the application. See Applicant Exhibit 55, 11-15-96 and 11-20-96 Reports. Further, the defense was provided a "Rap Sheet", Applicant's Exhibit 52, which revealed guilty pleas to three counts of "theft by deception" and two counts of "bad checks" with three years probation. At trial, upon defense questioning, Ms. Pivero revealed that she had "rap sheets...probation" and had to pay restitution for the cars. R. 1921.

In Kyles, the Court held that undisclosed evidence was material if there was a reasonable probability that it would have changed the outcome of the proceeding. A "reasonable probability" is defined as a probability sufficient to undermine confidence in the outcome. Kyles, 514 U.S. at 434. As Kyles stated, the defendant must show "that the favorable evidence [withheld] could reasonably be taken to put the whole case in a different light as to undermine confidence in the outcome." Contrary to the claim of the Applicant, the mere fact that a document possibly could be used for impeachment and was undisclosed under Brady does not mean there must be a new trial. See Campiti v. Matesanz, 333 F.3d 317, 322 (1st Cir. 2003) (nondisclosure of witness' wrongdoing not "material" because additional evidence against defendant meant there was a reasonable probability the result would have been different); U.S. v. Jackson, 345 F.3d 59, 73-79 (2nd Cir. 2003) (nondisclosure of impeachment evidence not "material" under Brady because incriminating evidence against defendant significant and defense

could impeach without the non-disclosed material); U.S. v. Zuno-Arce, 339 F.3d 886, 890-93 (9th Cir. 2003) (nondisclosure of further impeachment evidence not material because defense did impeach and new evidence did not undermine confidence in the outcome); U.S. v. Payne, 63 F.3d 1200, 1210 (2nd Cir. 1995) (no violation where government did not disclose impeachment evidence in prior affidavit of co-conspirator because con-conspirator's testimony was only a fraction of the case linking defendant to the crime). Here, the inconsistent statement about the check potentially made to Solicitor Bailey was similarly not material when viewed in light of all the other evidence available to challenge the credibility of the witness.

Confidence in the outcome of the case is not undermined assuming this non-disclosure. First, it is clear that Mr. Aleksey was an active participant in the Lexus transactions, albeit that Ms. Pivero signed the checks, as she testified. The risky impeachment could have suggested Mr. Aleksey was more dominant or in fact, that Ms. Pivero had either misspoken about the Lexus checks or been misunderstood. According to the Doylestown documents and her plea, all which preceded her alleged comments to Solicitor Bailey, there was no indication that she had ever denied to law enforcement or the court that she was the author of the Lexus checks. Further, the Lexus transaction was initially brought up by the defense in their cross-examination of Ms. Pivero in the guilt phase. The failure to disclose does not undermine confidence in the outcome and the Applicant has failed in his burden of proof on this issue.

C. Ineffective Assistance of Counsel

The Applicant contends Counsel failed to adequately impeach Ms. Pivero on the fact of her particular criminal convictions, her involvement in the Lexus fraud, and whether she was truthful at trial in August 1998 when she claimed to be employed at Sensational Scissors as a

hairdresser. For the reasons set out below, the Applicant has failed to meet his burden of proof under Strickland v. Washington, supra. As set out previously, where Counsel has a valid strategic reason, he cannot be deemed deficient under Strickland.

At the time of the August 1998 trial, Sara Pivero had been convicted, by entry of a nolo contendere plea to three counts of "theft by deception" and two counts of "bad checks" and was serving three years of probation as of July 28, 1997 for her involvement in the lease of the Lexus. It is also clear that in the guilt phase, Counsel Sims did not attempt to impeach her with her prior criminal record, although it had been turned over to them upon request. PCR R. 575. Counsel Sims acknowledged that he could have impeached her with her record, but did not do so at trial. PCR R. 578-79, 582. In hindsight, he thought he might have overlooked it.

This Court finds that even if Mr. Sims overlooked the criminal record, it is clear that he developed on cross-examination in the guilt phase her involvement in the purchase of the Lexus. As Counsel Stone stated, it was obvious from the beginning that she was part of the deception. PCR R. 1102-04. Importantly, the criminal convictions arose directly from the involvement with the Lexus, initially on the defense guilt phase cross-examination. R. 1618-20. A review of the Applicant's Exhibit 51 reveals that her statements to the court at the nolo contendere plea were consistent with her trial testimony in Mr. Aleksey's trial. Further, in the penalty phase, Ms. Pivero stated during cross-examination that she has a criminal record (rap sheet), was on probation and was required to make payments on the Lexus as a result of her involvement with Mr. Aleksey. R. 1921. With this information before the jury, the omission to particularize the crime on cross-examination does not undermine confidence in the outcome under Strickland, supra.

Mr. Aleksey further criticizes Counsel concerning his failure to further develop on cross-examination specific circumstances surrounding the purchase of the Lexus. First, he now contends that from the Doylestown police reports, Counsel should have developed that Ms. Pivero was aware that the checks she wrote were from an insufficient account because she subsequently told police that she was hoping to receive funds "from a friend." See R. 1909. As Counsel Sims noted, he did not see the strategic benefit in parsing this item from the Doylestown report. Mr. Sims stated that an alternative interpretation, based upon the entirety of the reports was that at the time she thought Mr. Aleksey, her friend, would make good on the checks. PCR R. 597, 602-03. Applicant's Exhibit 55 (and 85) supports that approach where the police reports revealed when Sara Pivero was notified by telephone, Mr. Aleksey would expeditiously return the telephone calls. The police reports reflect that Mr. Aleksey, not Ms. Pivero, told Thompson Lexus to redeposit the checks and that he would make good on the checks. Applicant 55, [Report 10/08/96, p. 2; Report 10/10/96; Report 10-11-96, p.1-2]. Mr. Sims stated that his notes reflected that he had reviewed these Doylestown documents. PCR R. 597-99, 653. Mr. Sims felt all these notations suggested was that when Mr. Aleksey received notification of the problem with Lexus, Ms. Pivero thought that Mr. Aleksey would give a good check. PCR R. 602-03.

Counsel Stone recognized the difficult factual area they were in. He stated that the strategy was to make her involved, but not as close as a co-conspirator that Mr. Aleksey would feel comfortable revealing to her that he shot a trooper. PCR R. 1203.

The Applicant also asserts that Counsel should have impeached about the salary discrepancy of the W-2 of $78,984.25 (App. 55), the credit application of $7500 per month ($90,000) and her real income as a hairdresser ($12,000-15,000). First, she consistently denied

that she filled out the fake W-2 form. However, she admitted, at some point, that she signed the credit application that had $7500 per month. The discrepancy between her real salary and reported salary was presented to the jury. R. 1619-20 (filled out the credit application) (cross-examination); 1907 ($15,000 salary as stylist); 1910 (fake W-2 for $78,000). The Applicant contends that this testimony should have been fully impeached by asserting that she additionally made a false representation about $7500 per month on the credit application. However, according to the police report, her response to this situation was that Michael (Mr. Aleksey) told her to do so. PCR R. 601, Applicant 55. In light of the other evidence as a whole, it is difficult to see how the failure to ask the question on the proposed topic would undermine confidence in the verdict.

The Applicant further asserts that on cross-examination the defense should have developed that Ms. Pivero had presented Mr. Aleksey to both the dealership and initially to police as her brother or half-brother, when in fact he was her boyfriend. Mr. Sims agreed he could have impeached her with these false statements, but did not. PCR R. 586-91. Mr. Sims acknowledged that he had reviewed the document which included this information. PCR R. 590-91. The "impeachment" potential does not undermine confidence in the outcome. It could have been viewed as Mr. Aleksey's modus operandi of manipulating women to their detriment. This Court concludes that the failure to present these statements does not prove ineffective assistance of Counsel or prejudice under Strickland.

The Applicant further seeks to suggest that the "love letters" which assert Ms. Pivero was taking the blame should have been used to impeach the claim that she was a victim and Mr. Aleksey was draining her account. However, Ms. Pivero's testimony at trial already explained

this dichotomy - "I was upset, but I never left his side" and "I had no reason to hurt him. Yes, he took a lot of money from me, but it wasn't that important." PCR R. 1622. The jury was aware of the relationship Mr. Aleksey and Ms. Pivero shared and the additional and consistent information from the letter, the Court finds it would not have altered the jury's verdict.

Similarly, Mr. Aleksey now questions the employment of Ms. Pivero at trial as being at Sensational Scissors when at her plea in 1997 she stated she worked at a grocery and lost her job as a hairdresser. The Applicant has failed to prove that Ms. Pivero was not employed as the hairdresser when she testified in 1998. Further, there was no showing that Counsel was ever aware that she was not employed, at the time of trial, at Sensational Scissors. PCR R. 570-76. Viewing Counsel's conduct based upon what they knew at trial, it was neither deficient nor prejudicial to the Applicant and his claim must be denied.

SUMMARY AS TO PIVERO CLAIMS

For all the foregoing reasons, the allegations related to Sara Pivero are without merit for relief. In Ground Q(3), the Applicant claims the State knowingly failed to provide to trial Counsel a statement given by Sara Pivero to the agents of SLED. It was revealed during the testimony of SLED agent Darnell and the Court finds that there was never a statement given by Ms. Pivero. See PCR R. 1678-79. Therefore, I would find that the Applicant was not denied due process of law as to this issue, and I would deny the Applicant's request for relief.

With regards to Ground O, the Applicant claims he was denied the right to the effective assistance of Counsel during the guilt or innocence phase of trial and in Ground P as to sentencing. As to Ms. Pivero, this Court finds that each of the allegations presented to the Court by the Applicant rest entirely on tactical decisions made by trial Counsel. This Court finds that

trial Counsel's strategic decisions were not deficient under Strickland, and therefore, the Applicants application for PCR would be denied with regards to each of these issues. Further, even if the Applicant successfully established his grounds for deficient performance with regards to any of these allegations, I would find the Applicant has failed to establish prejudice to which he suffered as a result of the alleged violations considered either individually or collectively.

YELENA BATKILINA ISSUES

Ground O (2) **IAC - Guilt (failed to adequately impeach)**

Trial Counsel failed to properly cross examine and impeach state's witness Yelena Batkilina. Counsel did not impeach this witness with evidence of prior criminal convictions, character evidence involving specific instances of prior dishonest conduct, or challenging her false testimony.

Ground O (9) **IAC - Guilt (failed to investigate)**

Trial Counsel failed to fully investigate the crime charged and the state's witnesses and to present that information to the jury in a coherent and meaningful manner.

Ground R (1) **False Testimony - date of gun purchase**

The prosecutor knowingly presented false testimony when state's witness Yelena Batkilina testified incorrectly about the date of purchase of the weapon in this case, not clarifying conflicting testimony between Ms. Batkilina and state's witness French and allowing Ms. Batkilina to testify falsely that she had not seen Applicant after either the purchase of this weapon or, alternatively, after Applicant's release on bond for a Pennsylvania charge. The prosecutor had information in his possession which informed him this testimony was patently false. Further, the prosecutor specifically relied on this false testimony during his closing argument.

Ground Q (2) **Brady - Failed to disclose prior record and**

acts of dishonesty

The state knowingly failed to disclose, to Applicant's trial Counsel, evidence of Yelena Batkilina's prior criminal record and other specific acts of dishonesty, fraud and wrongdoing.

In this portion of the memorandum, pages 35-39, Mr. Aleksey asserts that the prosecution violated the mandates of Brady v. Maryland, supra, in failing to disclose the full criminal history of Yelena Batkilina from Florida and the Volvo scam from Lower Moreland, Pennsylvania and that Counsel was ineffective in failing to adequately investigate or impeach Ms. Batkilina concerning her criminal record, the timing of the gun purchase, and her continuing association with Mr. Aleksey after either November 1996 or February 1997. In the application he also contended that false testimony was presented by the erroneous gun purchase date of 1996 rather than 1997. For the reasons set forth below, this Court finds that Mr. Aleksey has failed in his burden of proof.

A. The Guilt Phase Testimony of Yelena Batkilina

The first witness for the state in the guilt phase was one of Mr. Aleksey's girlfriends Yelena Batkilina. R. 913-25. She testified that she lived in Philadelphia and was a new student at Temple University. In 1990 she moved from Russia to the U.S. R. 914.

In July 1996, she met Mr. Aleksey at a girlfriend's home. R. 914-15. At that time, he was known as Michael Pivero, and they developed a boyfriend-girlfriend relationship. R. 915.

Solicitor Bailey then asked her to recall October 17, 1997[43] and whether or not she went to Tom's Sporting Goods. R. 915:16-18. She went to the store to purchase a gun with Mr. Aleksey. She looked at the guns and picked out one she could hold. She came back on November 2 to pick up the gun, again with Mr. Aleksey. She verified her signatures on the paperwork she filled out at Tom's Sporting Goods. R. 917-18 (State Exhibit 3 [Record of Sale for Firearm], State Exhibit 4 [Firearms Transaction Record]). She verified that the information on the forms were correct, including her social security number, name, and serial number for the pistol. R. 918-19. She verified that State Exhibit 5 (nine millimeter pistol) carried the same serial number as her purchased weapon. R. 919.

She stated that she paid cash. She brought the gun home and gave it to her mother (Galena) and she put it somewhere in her room. R. 920. Ms. Batkilina stated that the last time she saw the weapon was on the date she picked it up and gave it to her mom. R. 920.

She also stated that the last time she saw Mr. Aleksey was in November. R. 920. She said she never saw him after November 1997. Id. At that time he had started using the name Michael Batkilina. R. 921. She described his normal dress as white turtleneck, blue jeans, and white sneakers. R. 921.

[43] As revealed in the State Exhibits No. 3 and 4 and the testimony of Thomas French, R. 931:14, 932:19, the actual date was 1996, not 1997. During the PCR hearing, Solicitor Bailey explained his error and confusion about the dates and that 1996 was the arrest date. PCR R. 1303-04, 1308-10.

Thomas Sims did the cross-examination of Ms. Batkilina. He developed the fact that Applicant used various names and had assumed her last name. R. 922. Without stating the date, he developed that while they were together she had posted $10,000 bond for him.[44] R. 922.

Mr. Sims also developed that she went to the Sporting Goods store to purchase a gun she could handle, not a big gun. R. 923. She acknowledged that she was the person buying the gun and felt this weapon was one a woman could easily handle. R. 924.

When she stood bond for him, she said he was known to her as Michael Pivero. R. 924. However, she stated that they bailed him out as "Bayan Aleksey." R. 924. She stated that when she posted bond for him, he did not show up at trial. R. 924.

On re-direct, she stated that she did not know where he went when he did not show up for trial - "he didn't go." R. 925. She also clarified that she did not know or see Ms. Perez Blackwell. R. 925.

On re-cross, Mr. Sims developed that the charge she stood bond on was fraudulent use of a credit card. R. 925.

B. Brady Claims

The Applicant contends that the prosecution withheld impeachment material from the defense. Particularly, he claims that Ms. Batkilina's convictions for "attempt to commit fraudulent use of a credit card", a misdemeanor first degree and "conspiracy to commit grand theft", a misdemeanor-first degree, which was entered in State v. Batkilina, in Kissimmee, Oscala County, Florida on March 12, 1998, should have been revealed to the defense as potential

[44] It was developed at the PCR hearing that the date of the bonding was February 1997 from Bucks County. Applicant's 5.

impeachment material.[45] She was placed on probation for two years as a result of her negotiated plea. Applicant's Exhibits 3, 6. She was also ordered on that date to have no further contact with Mr. Aleksey. A second set of alleged undisclosed Brady material consisted of alleged fraudulent conduct by Ms. Batkilina, again with Mr. Aleksey, concerning a $33,551.80 bad check to Burdumy Volvo in Huntingdon, Pennsylvania dated August 13, 1997 and made part of a police complaint at Lower Moreland Police Department. Applicant's Exhibit 9.

Under the Brady decision, evidence is material for purpose of determining whether the state is required to disclose it, only where there is a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different, and a reasonable probability is a probability sufficient to undermine confidence in the outcome. State v. Cheeseboro, 346 S.C. 526, 552 S.E.2d 300 (2001). The Brady rule of disclosure extends to evidence that is not in the actual possession of the prosecution, but known by others acting on the prosecution's behalf in the particular case, including the police. State v. Kennerly, 331 S.C. 442, 503 S.E.2d 242 (S.C. App. 1998); see Johnson v. Catoe, 336 S.C. 354, 520 S.E.2d 617 (1999); State v. Von Dohlen, 322 S.C. 234, 471 S.E.2d 689 (1996) (information concerning potential fraudulent activity of a witness known by a state agency, not imputed to solicitor's office).

It has generally been held under Brady that the prosecution has no duty to disclose or produce evidence outside of its control. State v. Jackson, 92 P. 3d 1263 (N.M. App. 2004). The state's failure to disclose prior convictions of state witnesses has been held not to violate disclosure rules when the state did not know of the existence of the prior convictions outside of

[45] It is noted that at the March 1998 plea, that Mr. Aleksey was the co-conspirator on the charges in Florida and was awaiting his murder trial. Applicant Ex. 3, p. 5.

its jurisdiction. State v. Linkhous, 460 S.E.2d 288 (1995); compare State v. Jarrell, 350 S.C. 90, 564 S.E.2d 362 (S.C. App. 2002) (failure to disclose evidence of investigation of witness for an uncharged armed robbery was not Brady error where materiality not shown in murder case).

In Reddy v. Jones, 572 F.2d 979 (4th Cir. 1977), the Court held that state prosecutor was under no duty to disclose matters not within their custody or in the control of agencies not involved in the investigation of the particular crime. Accord U.S. v. Casas, 356 F.3d 104, 115-16 (1st Cir. 2004) (no duty to gather material outside of prosecution control); U.S. v. Hawkins, 78 F. 3d 348, 351 (8th Cir. 1996) (no Brady violation despite failure of Missouri prosecutor to disclose exculpatory evidence held by Illinois prosecutors in connection with case pending against defendant which Missouri prosecutors were unaware); U.S. v. Beers, 189 F.3d 1297, 1304 (10th Cir. 1999) (no Brady violation by federal government's failure to disclose alleged impeachment evidence obtained by Albuquerque police because no evidence of federal participation in state investigation); Moon v. Head, 285 F.3d 1301, 1309-10 (11th Cir. 2002) (no Brady violation despite failure to disclose information held by Tennessee investigator because there is no evidence that Tennessee law enforcement and Georgia prosecutors had worked together in prosecuting the case).

1. The 1998 Florida Convictions

This Court finds that Solicitor Bailey had no affirmative duty to disclose the Florida convictions because he had no knowledge of their existence, nor did any law enforcement involved in the investigation. First, it is uncontested that the Solicitor's Office ran a criminal record check on Ms. Batkilina on June 11, 1998 and provided it to defense Counsel. Applicant's Exhibit 7. It is also undisputed that this "rap sheet" did not include any information about Ms.

Batkilina's Florida convictions on March 12, 1998, a time before the rap sheets were run. It is also uncontested that Solicitor Bailey was unaware of the Florida convictions. PCR R. 1315-18, 1418-19.

The Applicant asserts that the Applicant's comment during the statement he gave about Ms. Batkilina's trouble in Florida mandated the obligation on the prosecution to develop the information about the Florida conviction. As Solicitor Bailey stated, "There's no way for me to follow up, I did check the rap sheet and it did not appear on the rap sheet, and in order to do any follow up on that I would have had to notify every county, every municipality in the State of Florida until I found something... I assumed Mr. Aleksey knew what he was talking about, he was apparently with her when whatever was done and could provide his attorneys with the jurisdiction where those charges occurred and they could obtain what was needed." PCR R. 1419-20.[46]

Further, under Solicitor Bailey's theory, the defense based upon Mr. Aleksey's comments, had better knowledge to develop the information. According to Counsel Stone, Ms. Batkilina, prior to trial, telephoned him and during the call advised Mr. Stone that she was on probation from her dealings with Mr. Aleksey. PCR R. 1013-15, 1017; cf. Anderson v. Leeke, 271 S.C. 45, 248 S.E.2d 120 (1978) (Brady applies to evidence the prosecution has that is unavailable to defense, where evidence is equally available to accused, obligation on part of state to furnish is relieved).

[46] Apparently, Mr. Aleksey was willing to do so in the PCR proceedings where this information was developed. The discovered information further revealed Mr. Aleksey's involvement in the matter. See Applicant's Exhibit 3. 6. However, at trial time, Mr. Aleksey was unwilling to disclose any particulars to the defense Counsel about Ms. Batkilina's Florida problems. PCR R. 164-66, 633-34, 1179-80.

It is clear that Brady does not apply to evidence the defendant possesses. See U.S. v. Rodriquez, 162 F.3d 135, 147 (1st Cir. 1998) (no Brady violation despite failure to disclose tactics to gain witness cooperation where defendant knew of witness' long criminal history); U.S. v. Bracy, 67 F.3d 1421, 1428-29 (9th Cir. 1995) (no Brady violation despite failure to disclose witness' criminal background in Florida and Wisconsin where defendant had sufficient information to develop information); U.S. v. Zuazo, 243 F.3d 428, 431 (8th Cir. 2001) (no Brady violation despite failure to disclose potential witness because witness had traveled with defendant and he was aware of witnesses potential testimony).

The Applicant has failed to show a violation of Brady by not disclosing the matter of the conviction. However, even if a duty to disclose existed, the criminal record (evolving from conduct with Mr. Aleksey), if disclosed, would not undermine confidence in the outcome under the test of Kyles v. Whitley, supra. First, the events in the Florida convictions involved Mr. Aleksey. Second, the defense was aware of the "probation" from their investigation. Third, there is no dispute that Ms. Batkilina purchased the gun in Mr. Aleksey's presence and that the gun she purchased ended up being in Mr. Aleksey's possession and was the murder weapon. Contrary to the statements in the Applicant's brief, there was no assertion at trial that Mr. Aleksey took the gun from either Ms. Batkilina or her mother "against her will." The only implication was that it was done without their knowledge. This fact had no bearing on the outcome of either phase.

Further, Counsel Stone stated that Ms. Batkilina was a good witness for the defense ("she didn't hurt us") and provided useful information for their theory. PCR R. 1014-15. Mr. Stone declared that she provided the testimony at the outset of the case that the gun was a woman's

gun. Ms. Batkilina noted that she had gotten Mr. Aleksey out on bond which helped the "non-violent upon arrest" theory. PCR R. 1016-17. The testimony revealed, early in the case, that Mr. Aleksey "knew how to get out of trouble" without violence. PCR R. 1023-24. There is no reasonable probability that the result of the trial would have been different if the State had proved the subject information.

This Court finds that the Applicant has failed in his burden of proof of either prong under Kyles.

2. Lower Moreland Police Department Incident Reports

The Applicant further contends that uncharged conduct of Ms. Batkilina with Mr. Aleksey in Huntingdon, Pennsylvania should have been disclosed. This relates to a $33,551 check for a Volvo that bounced and ultimately resulted in the return of the Volvo by Ms. Batkilina's mother after Mr. Aleksey was threatened with arrest for either the theft of the vehicle or issuing a bad check. As with the above-record, Solicitor Bailey unlike Mr. Aleksey, was not aware of the incident involving the Volvo described in Applicant's Exhibit 9. PCR R. 1330-33. Although SLED Agent Darnell recalled speaking to police in Philadelphia and had Kathy Colfer's name in his handwritten notes [PCR R. 1651], he did recall receiving warrants on Mr. Aleksey. PCR R. 1651-54. Contrary to the claims of Mr. Aleksey, the fact that Lower Moreland Police Department sent its solved, uncharged, Volvo incident report to Philadelphia Fugitive Task Force member Kathy Colfer (Applicant's Exhibit 9, p. 3) does not mean this incident would be discussed or provided to SLED Agent Darnell. Simply put, they had failed to show an obligation to disclose what the state prosecution team never possessed.

Further, it is evident that Mr. Aleksey was aware of the information since he was involved in the return of the vehicle and threatened with arrest. Since he possessed the knowledge of the uncharged crime, he could have revealed it.

The Applicant contends that the Lower Moreland incident in August 1997 shows that Mr. Aleksey was with Ms. Batkilina after February 1997 when she bonded him out. He contends that had this information been provided, he could have impeached her statement that the last time she saw Mr. Aleksey was in November 1997. First, Solicitor Bailey asserted that his argument and presentation of Ms. Batkilina was to link Mr. Aleksey to the gun through Ms. Batkilina, not Ms. Perez Blackwell. PCR R. 1331; see also PCR R. 1310. Further, Solicitor Bailey asserted that he never sought to present any of Mr. Aleksey's women to be innocent people, but instead were the types he would associate with. PCR R. 1335. Solicitor Bailey also did not read his comments to suggest that the gun and Mr. Aleksey disappeared simultaneously or that the last time she saw Mr. Aleksey was the date she purchased the gun. PCR R. 1310-14. Solicitor Bailey stated that the testimony and introduction of the gun documents was to show Ms. Perez Blackwell was not in the picture when the gun was purchased - "the date was not that relevant." PCR R. 1312.

The problem with the Applicant's approach to the Brady claim is that Ms. Batkilina testified that she last saw Mr. Aleksey "somewhere in November" [November 1997]. R. 920. He asserts that the introduction would show that she was with him in August 1997. Whatever relevance his present theory has, it was not the theory the state had in its presentation. In fact, even the defense contended that he did not see how it would help Mr. Aleksey, in hindsight, to show the jury, in the guilt phase, that she was actually committing more crimes with him than she said. PCR R. 1023. Further, since he ultimately possessed the gun Ms. Batkilina purchase, it

is unclear how the difference in dates would prove he did not steal the gun. The Applicant has not shown, even if there was a duty to seek out and disclose that the failure to do so would undermine confidence in the outcome.

Further, the Lower Moreland report reveals that Mr. Aleksey had actual knowledge of the incident and bad check by Ms. Batkilina. The disclosure would merely have presented support for information that the defense had through their client, although not revealed. However, it is evident that the Applicant also had disclosed to them in the ATF report that Ms. Batkilina was involved in a "credit card scam" that was not presented on cross-examination and they were aware she was "in probation." The Court concludes that Mr. Aleksey has failed to show, as to the Lower Moreland matter, a reasonable probability the result of the proceeding would have been different.

C. Ineffective Assistance of Counsel

In his guilt phase ineffective assistance claim, he contends that Counsel should have impeached the theory that Mr. Aleksey disappeared from Ms. Batkilina's life shortly after the gun was purchased. First, as stated in the immediate section, the Applicant's current emphasis about the state's theory was in error and parses various testimony, particularly an erroneous date when the gun was purchased, to suggest that when she stated she last saw Mr. Aleksey in November 1997, that she actually meant November 1996 which would be a false statement. In fact, he attempts to suggest close temporal proximity of certain events when none was suggested. Simply put, as the jury would have been aware, Ms. Batkilina specifically testified that she last saw Mr. Aleksey in November 1997. She did not tie this to the date she purchased the weapon in her testimony. Supportive of the inference that the testimony was correct, in hindsight, was (1)

her driver's license issued September 1997 carried Vera Aleksey's address as her address. Applicant's 11; it is now known she had been involved with Mr. Aleksey in the August 1997 scheme with the Volvo, ultimately requiring the car's return by Ms. Batkilina's mother when the check bounced and after Mr. Aleksey was advised of the time it had to be returned or he would be charged with a bad check offense, Applicant's 9; the assertion that Ms. Batkilina bonded him out in February 1997 (although her mother advised law enforcement that she bonded him out in December 1996), Applicant, p. 5, Applicant Exhibit 9 (p. 3 of Supplemental Report); and, importantly, Mr. Aleksey told Counsel Sims that he was with Ms. Batkilina during the August 1997 period. PCR R. 215-216.

The Applicant contends the prosecution's closing argument where he stated "She carried the gun home. The gun disappears, he disappears and she sees it again here in court the next time", R. 1763, suggests a temporal misstatement in the state's theory of the case because the purchase of the gun and disappearance of Mr. Aleksey did not happen at the same time. While this interpretation is feasible, it was not the only interpretation from the comments or the evidence. As Solicitor Bailey stated, the only relevant factor, for the trial, was that Ms. Batkilina, not Ms. Perez Blackwell purchased the gun and Mr. Aleksey was last in possession of it. The claimed time differences would not impact, to a reasonable probability, the outcome of the case.

Further, the lawyer's failure to independently locate these matters was not deficient performance. As to Ms. Batkilina's alleged problems in Florida, Mr. Aleksey refused to explain to his lawyers what he was referring to in his statement to police, despite the ultimate fact of his involvement in the Florida scheme. PCR R. 158, 166, 202, 633-43, 1177-80. Further, Mr. Stone

was aware that Ms. Batkilina was "on probation" from her telephone call with him and could easily have resolved exactly what the charges were, but it was evident that they arose from a scheme she had with Mr. Aleksey. PCR R. 1176.[47] What Counsel did learn from Mr. Aleksey when he was fearing the women, was that he had stuff on them, but then refused to give specifics. PCR R. 1178-80. In fact, Mr. Aleksey told Mr. Sims that she had better not come down here and lie and that "I'll deal with her", but nothing specific about Florida. PCR R. 166.

In hindsight, Counsel stated that if they had the correct Florida convictions, they could have used them to impeach her. PCR R. 159-60. Similarly, Mr. Sims felt that use of the disclosed ATF Report of the unreferenced "credit card scam", would be useful in impeachment as well. Similarly, with the Volvo bad act with the bounced check might have been useful for impeachment. However, the problem in each of the instances was that Mr. Aleksey possessed some knowledge and failed to reveal it. More probative, however, is that if the use of the material was to reveal a dishonest act on Ms. Batkilina's part, [except for the "Christina" lie on the Plymouth Township matter] because of Mr. Aleksey's continuous direct involvement it could have depicted an apparent Svengali[48] of Ms. Batkilina's fraudulent actions.

Although Counsel were unclear why they did not pursue further impeachment information from Ms. Batkilina on her probation, this alleged deficiency does not undermine confidence in the outcome. As with the Brady material, the critical part of her testimony appears accurate - she bought the weapon, it eventually ended up with Mr. Aleksey and she did not know

[47] Counsel Stone noted that Ms. Batkilina contacted him by telephone. PCR R. 1013-14, 1176-77, 1181-82.

[48] "Svengali" means "a person who completely dominates and controls another, usually for selfish or sinister motives. It is a literary illusion to the character Svengali, a hypnotist, in George du Maurier's 1894 novel Trilby.

Ms. Perez Blackwell. These facts were unimpeachable by any criminal record or further bad act history.

Counsel was of the opinion that Ms. Batkilina was a favorable witness for them inasmuch as she again revealed Mr. Aleksey's ability to extract himself from his schemes in a non-violent manner. This was presented through the evidence that she bonded him out. Also, she supported the theory that the gun purchased was for a female, not Mr. Aleksey, at the time of the purchase which could support his inference that it was ultimately Ms. Perez Blackwell's weapon, not his.[49] As Mr. Sims cautiously stated, "when you start talking about his involvement in that he was going to open more even more doors than we chose to open as it relates to his activities, we wanted to show him as a gigolo, we wanted to show him as a man who ... could, you know, con women, talk to them, get them to give him their money and get them to buy cars and expensive toys and have a good time in Atlantic City..." PCR R. 634. Mr. Sims sought to present Mr. Aleksey as the driving force in these women's activities – "his thing [was] to meet them, get what he could get and move on." PCR R. 634.

Finally, the misstatement (and arguably inferentially the misunderstanding of Solicitor Bailey) concerning the date of the gun purchase does not require a new trial based upon the defense's failure to further clarify it. First, the gun records introduced revealed the correct date, November 2, 1996. State Exhibit 3; State Exhibit 4. Further, Thomas French, the seller of the weapon, corrected the misstatement and unequivocally stated it was November 2, 1996. R. 931:14, 932:17-19. Any failure on defense Counsel's part to correct Ms. Batkilina's testimony

[49] Counsel Stone stated that he did not recall what Aleksey told him as to how he came into possession of the gun. PCR R. 1180-81.

(or impeach her memory) was corrected by the records and testimony of French. Under Strickland, prejudice was not shown by the independent presentation. This Court concludes that the failure to present the impeachment evidence as to Ms. Batkilina does not prove ineffective assistance of Counsel or prejudice under Strickland.

SUMMARY AS TO BATKILINA

In Ground Q(2), the Applicant claims the State knowingly failed to disclose evidence of Yelena Batkilina's prior criminal record and other specific acts of dishonesty, fraud and wrongdoing. This Court finds that the Applicant has failed in his burden of proof to show that the state's failure to disclose this information was a violation of the disclosure rules established by Brady and its progeny. Therefore, the Court denies the Applicant's request for relief with respect to this Ground.

The Applicant claims he was denied due process of law as a result of the prosecution's presentation of false testimony and their failure to correct the false impression created by that testimony in Ground R. In order for the Applicant to succeed on these grounds, the Applicant must show 1) the witness gave false testimony; 2) the falsity was material in that there is a reasonable likelihood that it affected the judgment of the jury; and 3) the prosecution used the testimony knowing it was false. Giglio v. US, 405 U.S. 150, 92 S.Ct. 763 (U.S. 1972). This Court finds with regards to each of the Grounds listed in his Application for Post-Conviction Relief, the Applicant has failed to meet his burden with respect to Giglio, particularly that the jury's judgment was affected. Therefore, the Court denies the Applicant's request for relief with respect to Ground R.

The Applicant claims he was denied the right to effective assistance of Counsel during the guilt phase of trial, and again, the Applicant lists numerous instances of what he believes amounts to ineffective assistance of Counsel. This Court finds that each of the allegations presented to the Court by the Applicant are rested entirely on tactical decisions made by trial Counsel. This Court finds that trial Counsel's strategic decisions were not deficient under Strickland, and therefore, the Applicants application for PCR is be denied with regards to each of these issues. Further, even if the Applicant successfully established his ground for deficient performance with regards to any of these allegations, the Court alternately finds that the Applicant has failed to establish prejudice to which he suffered as a result of the alleged violations.

LISA WATSON CLAIMS

Ground O (3) **IAC - Guilt**

Trial Counsel failed to properly cross examine and impeach state's witness Lisa Watson. Counsel did not impeach witness with character evidence involving specific instances or prior dishonest conduct or challenging her false testimony.

Ground O (9) **IAC - Guilt**

Trial Counsel failed to fully investigate the crime charged and the state's witnesses and to present that information to the jury in a coherent and meaningful manner.

Ground P (4) **IAC - Sentencing**

Trial Counsel failed to properly cross examine and impeach state's witness Lisa Watson. See Ground O, number 3.

Ground P (5) **IAC - Sentencing**

Trial Counsel failed to investigate backgrounds of state's witnesses and their allegations. Such an investigation would have provided a substantial amount of impeachment material.

Ground Q (4) **Brady Prosecution Claim**

The state knowingly failed to provide, to trial Counsel, evidence of fraud involving state's witness Lisa Watson.

Ground R (4) **Giglio - Prosecution Claims**

The prosecutor knowingly presented false testimony when state's witness Lisa Watson testified, in the guilt phase of the trial, that she had reported the White Mustang stolen on October 5, 1997.

Ground R (5) **Giglio - Prosecution Claims**

The prosecutor knowingly presented false testimony when state's witness Lisa Watson testified, in the sentencing phase of the trial, that Bayan Aleksey stole money from her husband's credit cards.

The Applicant claims that either his Counsel was ineffective in failing to investigate or impeach Lisa Watson with various inconsistent statements and evidence of her participation in and benefit from being involved in Mr. Aleksey's schemes and/or that the prosecution failed to disclose such information and failed to correct false testimony given by her. This testimony related to the loss involving her husband's credit cards, when the state knew she was directly involved in the fraudulent transaction involving Western Union. Similarly, the Applicant contends that there was a Brady violation in the state's failure to disclose this scheme. Finally, Applicnt claims he received ineffective assistance of Counsel related to the investigation and examination of Lisa Watson, in particular because Counsel:

1. Failed to investigate the credit card fraud concerning Ms. Watson's husband related in the Ms. Watson SLED statement;

2. Failed to investigate the fraud of Ms. Watson involving the lease of the Mustang;

3. Failed to impeach Ms. Watson based upon her inconsistent statement concerning:

   a. one visit verses three visits to dealership to sign papers;

   b. whether the theft was reported immediately or six weeks later;

   c. whether the event was reported as "stolen" or "try and locate."

   d. failure to illuminate the discrepancy between her testimony in the penalty phase about him putting a gun to her head (R. 1962) and the Jan. 21, 1998 statement.

Applicant has failed to meet his burden of proof in these particulars as will be discussed.

A. Lisa Watson's Trial Testimony

1. Guilt Phase Testimony

In the guilt phase, Lisa Watson testified that she met Mr. Aleksey in September 1997. R. 1276. She initially knew him as Joey Barkley, and later as Joey Gambino. R. 1276, 1278. She stated on September 30, 1997, she signed a lease agreement for the White Ford Mustang (which Mr. Aleksey was in possession of at the time of the incident). R. 1278. She said that Mr. Aleksey was allowed to use the car and was supposed to pay off the car, but never did. R. 1278-79. She said that Ford Motor Credit was "coming to her house every single day, three or four times." R. 1279. She said Mr. Aleksey would call and tell her there was a third party check to

pay for the car, but she failed in getting the car back or getting him to pay for it. She said she reported the vehicle stolen in Philadelphia. R. 1279.

Ms. Watson stated the last time she saw the Mustang was on September 30th after she signed the lease papers. R. 1279. She said she last saw Mr. Aleksey in the beginning of October, probably October 1. She claimed to have reported the car stolen probably the first week of October. R. 1280.

On cross-examination by Thomas Sims, he noted the confused series of events - meeting Mr. Aleksey at a gas station and then signing a lease on a car for him four weeks later. R. 1280-81. She said "he was good at what he did." R. 1281. She said Ford Motor Credit started calling asking for payments after the second month. R. 1281. She said it was purchased September 30 and she may have reported it stolen on October 5, "maybe." R. 1282.

Ms. Watson claimed that she reported it stolen to the 15th District. R. 1282. She stated law enforcement talked to her over the phone. She stated that she informed Ford Motor Credit (FMC) that she had obtained the car for Mr. Aleksey. She also stated that Mr. Aleksey had told FMC that she was his aunt. Ms. Watson denied she got scared when FMC indicated they would do a replevin action, but stated she did get scared when she noticed things missing from her house. R. 1283.

Ms. Watson said Mr. Aleksey filled out the lease application and asserted that she was working and making a certain amount of money when in reality she was unemployed with no income. R. 1284. She had separated from her husband. R. 1284. At the time she signed the lease, she said she was unaware what Mr. Aleksey had told them. She said she was at the dealership for half an hour, signed the paper, and walked out the door. R. 1285. Ms. Watson

stated that she did not recall FMC telling her that they were going to garnish her wages and denied telling them she didn't have a job so it wouldn't matter. R. 1285. She said Mr. Aleksey would call her "everyday" to see if she had reported the car stolen, and she told him no, even though she had. R. 1285-86. As to whether Mr. Aleksey would have known the car was reported stolen, Ms. Watson stated:

> If he didn't make payments on it and its been four months since I talked to him and he called me, no, I would not tell him it was stolen, I wanted him caught.

R. 1286. She stated she had never seen an arrest warrant for Joey Barkley because they had no information regarding him on the computer and she was unaware if a warrant was actually in existence. R. 1286-87.

A review of the closing argument of the state reveals no mention of Ms. Watson's testimony either by the State or defense. R. 1744-1790.

2. Penalty Phase Testimony

In addition to giving information about his aliases, Ms. Watson stated Mr. Aleksey was driving a Green Mustang when she first met him. R. 1961. Further, the White Mustang involved in the shooting was a car she leased and reported stolen because Mr. Aleksey "never" made any payments. R. 1961.

She said she agreed to lease the car in her name for Mr. Aleksey because:

> He told me he had bad credit and we had built a relationship. I trusted him and he said he was going to make full payment on the car. He wasn't even going to make payments. He was going to pay the car off completely and he never did.

R. 1962. She said she did not agree to sign at first because she was scared and didn't think everything was on the up and up. At one point he told her "that I should do it or he was going to

kill me" when he was holding a gun, but she "thought it was a joke" and "he was laughing" R. 1962-63. She said she was not afraid at that time. R. 1963.

Ms. Watson also testified that Mr. Aleksey around September 29th told her about an incident he had on the highway. R. 1963. She said he said "some asshole got in his way, so he shot him." R. 1963.

Ms. Watson stated that she kept calling FMC everyday to see if a payment had been made because Mr. Aleksey was not talking to her at that time. "He was going through my husband because he told my husband what happened." R. 1964. Ms. Watson testified to the following: Mr. Aleksey could call her, but she never called him. At one time, Mr. Aleksey asked her if she knew who he was talking to on the other line and then he said: "I'm talking to a dead person and hung up the phone." She said she was frightened because she thought it meant that she was going to die. R. 1964. Mr. Aleksey said that he was a Gambino in their next conversation, which she understood meant a New York crime family. R. 1965.

Lisa Watson stated that her relationship with Mr. Aleksey cost her $42,000 because of the car, her husband's credit cards, and her credit cards. R. 1965.

On cross-examination, Thomas Sims developed that Ms. Watson thought Mr. Aleksey was playing with the gun and not threatening her and she was not afraid of him due to his laughing. R. 1965-66. She stated she went to the police after she found out what he was doing to her. R. 1966.

Mr. Sims developed that when she gave her statements to law enforcement although she knew Gambino was a name he used, she did not say Mr. Aleksey was in the Gambino family because she did not believe he was in the family. R. 1966. She agreed with Mr. Sims that it was

bravado on his part and she thought he was trying to scare her with the Gambino name. She thought he was Joey Barkley. R. 1967. She thought "if the cops didn't get him, the Gambinos would", and was not concerned with him. R. 1967.

She confirmed she signed the lease agreement, with her two kids with her. R. 1967.

B. Giglio - Napue Claim

The state denies a criminal defendant due process when it knowingly uses perjured testimony at trial or allows untrue testimony to go uncorrected. Giglio v. United States, 405 U.S. 150, 153-54, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972); Napue v. Illinois, 360 U.S. 264, 269-70, 79 S.Ct. 1173, 3 L.Ed.2d 1217 (1959). To succeed in showing a due process violation from the use of allegedly perjured testimony, a defendant has the burden of establishing that (1) the witness in question actually gave false testimony, (2) the falsity was material in that there was a reasonable likelihood that it affected the judgment of the jury, and (3) the prosecution used the testimony in question knowing that it was false. Giglio v. United States, 405 U.S. at 153-54.

Giglio error is a Brady error that occurs when "the undisclosed evidence demonstrates that the prosecution's case included perjured testimony and that the prosecution knew, or should have known, of the perjury." United States v. Agurs, 427 U.S. 97, 103, 96 S.Ct. 2392, 49 L.Ed.2d 342 (1976). "If false testimony surfaces during a trial and the government has knowledge of it ... the government has a duty to step forward and disclose." Brown v. Wainwright, 785 F.2d 1457, 1464 (11th Cir. 1986). "In order to prevail on a Giglio claim, a petitioner must establish that the prosecutor knowingly used perjured testimony, or failed to correct what he subsequently learned was false testimony, and that the falsehood was material." Tompkins v. Moore, 193 F.3d 1327, 1339 (11th Cir. 1999).

The origins of the Giglio doctrine lie in the Supreme Court's decision in Napue v. Illinois, 360 U.S. 264, 79 S.Ct. 1173, 3 L.Ed.2d 1217 (1959), which held that a prosecutor's failure to correct false testimony by the principal state witness that he had received no promise of consideration in return for his testimony violated the defendant's Fourteenth Amendment due process rights and required a reversal of the judgment of conviction. The Court explained that "it is established that a conviction obtained through use of false evidence, known to be such by representatives of the State, must fall under the Fourteenth Amendment." Naupe, 360 U.S. at 269, 79 S.Ct. 1173 (citing Mooney v. Holohan, 294 U.S. 103, 55 S.Ct. 340, 79 L.Ed. 791 (1935)). "The same result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears." Id. This principle, the Court observed, "does not cease to apply merely because the false testimony goes only to the credibility of the witness," since "[t]he jury's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence, and it is upon such subtle factors as the possible interest of the witness in testifying falsely that a defendant's life or liberty may depend." Id. Reversal was required because "the false testimony used by the State in securing the conviction may have had an effect on the outcome of the trial." Id. at 272, 79 S.Ct. 1173.

Subsequently, in Giglio v. United States, 405 U.S. 150, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972), the Supreme Court held that the government's failure to correct false testimony that its key witness (the defendant's coconspirator) had received no promise of nonprosecution in exchange for his testimony, as well as the prosecutor's false statement to this effect in closing argument, required that the defendant be granted a new trial. The Court explained that "deliberate deception of a court and jurors by the presentation of known false evidence is

incompatible with rudimentary demands of justice." Giglio, 405 U.S. at 153, 92 S.Ct. 763 (citation and internal quotation marks omitted).

The Giglio Court made clear, however, that such errors do not require automatic reversal, and articulated a "materiality" standard to guide the determination of whether a new trial is warranted:

> We do not ... automatically require a new trial whenever a combing of the prosecutors' files after the trial has disclosed evidence possibly useful to the defense but not likely to have changed the verdict. A finding of materiality of the evidence is required under Brady. A new trial is required if "the false testimony could ... in any reasonable likelihood have affected the judgment of the jury."

Id. (citations and internal quotation marks omitted) (quoting Napue, 360 U.S. at 271, 79 S.Ct. 1173). Because "the Government's case depended almost entirely on [the falsely testifying witness's] testimony," the Court reasoned, his "credibility as a witness was therefore an important issue in the case, and evidence of any understanding or agreement as to a future prosecution would be relevant to his credibility and the jury was entitled to know of it." Id. at 154-55, 92 S.Ct. 763. Accordingly, the Court reversed the judgment of conviction.

Since its decisions in Napue and Giglio, the Supreme Court "has consistently held that a conviction obtained by the knowing use of perjured testimony is fundamentally unfair, and must be set aside if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury." United States v. Agurs, 427 U.S. 97, 103, 96 S.Ct.2392, 2397, 49 L.Ed.2d 342 (1976) (footnote omitted) (emphasis added); see also Kyles v. Whitley, 514 U.S. 419, 433 & n. 7, 115 S.Ct. 1555, 131 L.Ed.2d 490 (1995); United States v. Bagley, 473 U.S. 667, 677, 105

S.Ct. 3375, 87 L.Ed.2d 481 (1985); accord Brown, 785 F.2d at 1465-66.[50] The "any reasonable likelihood" standard differs from the materiality standard applicable to other types of Brady violations because of the nature of the error. As the Supreme Court has explained, "the Court has applied a strict standard of materiality [to Giglio violations], not just because they involve prosecutorial misconduct, but more importantly because they involve a corruption of the truth-seeking function of the trial process." Agurs, 427 U.S. at 104, 96 S.Ct. 2392.

The Applicant contends that Solicitor Bailey essentially committed Giglio - Napue error in failing to correct certain testimony. As revealed in the testimony of Solicitor Bailey, he credibly contends that there was no knowingly false testimony presented by Lisa Watson related to the loss developed from the fraud involving her husband's credit card funds and when she reported the "theft" of the vehicle. The Applicant has failed in is his burden of proof.

The Applicant contends Lisa Watson's guilt phase testimony, that she had not seen the car since September 30 and that she reported it stolen around either the first week in October or October 5, was false testimony. R 1280, 1282-84. He now contends that Solicitor Bailey should have known this was false testimony because he contends it was not reported stolen until November 13, 1997 to the 8th District of Philadelphia Police Department with a "Try and Locate" complaint and incident report when she was quoted as stating that she had lent the car to "Joey Barkley who has failed to return same as of this date." Applicant's Exhibit 17.

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[50] Giglio error does not fall within the category of constitutional error that the Supreme Court has characterized as "structural," requiring automatic reversal of a tainted conviction. A structural error is a "defect affecting the framework within which the trial proceeds, rather than simply an error in the trial process itself." Arizona v. Fulminante, 499 U.S. 279, 310, 111 S.Ct. 1246, 113 L.Ed.2d 302 (1991). The Supreme Court has found structural error "only in a very limited class of cases," including those involving complete denial of Counsel, a biased trial judge, racial discrimination in selection of a grand jury, denial of self-representation, denial of a public trial, and a defective reasonable doubt instruction. Neder v. United States, 527 U.S. 1, 8, 119 S.Ct. 1827, 144 L.Ed.2d 35 (1999) (citation and internal quotation marks omitted).

Solicitor Bailey stated first that everything he received from SLED in the investigation was turned over to the defense as part of his documented open file policy with records made at the Clerk's Office. PCR R. 1346-47. Solicitor Bailey stated that he had no reason to correct the testimony of Ms. Watson concerning the report. He said "I had no reason to doubt that was the correct date." PCR R. 1364-65. Although the Applicant relies upon the Ford Motor Credit Reports, Applicant's 17, to suggest that the initial report was only made on November 13, 1997, after another call from FMC, the FMC reports are subject to various interpretations. See PCR 1364, 1421. As noted on cross-examination, the initial entry with Ford Motor Credit (Applicant's Exhibit 21) on October 15, 1997 suggested that Ms. Watson had called them about the vehicle and wanted it repossessed from "Joey Barclay", but that FMC advised her they could not do it at the time because payments were not yet in default. Applicant's Exhibit 21, p. 6. Importantly, it also revealed that Ms. Watson had told them that "detective from Paul's Township had called her about the unit" and that FMC on that date had advised her to contact police. Applicant Exhibit 21, p. 6 (10/15/97 10:35 entry). Although the Applicant's Exhibit is dated November 13, 1997, it is with the 8th District. On cross-examination, the witness contended that she had spoken with the 15th District Department but that she had not signed anything. R. 1282-83.[51] It should be noted that in the penalty phase Ms. Watson stated she reported it stolen because Mr. Aleksey never made any payments. R. 1961.

This Court finds that the Applicant has failed to prove a Giglio – Napue violation related to the date of the stolen car reporting. In any manner, the exact date of the reporting was not a

[51] It is evident in the cross-examination of Ms. Watson that defense Counsel Sims had possession and used information from Applicant's 21 to question and impeach. However, the exhibit revealed that she had filed a police report on 11-13-99 with the Eighth District. Applicant's 21, p. 5 (11/19/97).

"material fact" - particularly when (1) the testimony was stated without exactness: e.g. "right after, probably October - -the first week of October" (R. 1280); "October 5th, maybe." R.1282. It is further evident that the record supports that Ms. Watson called FMC and reported the car was no longer in her possession, that she had not seen Mr. Aleksey for two weeks and that she wanted the car re-possessed, but they could not because payments were not in default. Also, the dealership stated that Ms. Watson had called "sometime later" after car purchase and reported it stolen. Applicant Exhibit 21, p. 5 (11/20/97 entry). Giglio – Napue requires a known discrepancy in a material fact. Ms. Watson's estimate when she reported it was inconsistent - when Mr. Aleksey had not made payments on the October dates. Contrary to the assertion, although possibly in factual error, there was no Giglio violation.

The Applicant also claims Giglio error in the penalty phase by the assertion that she lost $24,000 from her relationship with Mr. Aleksey, including money from her husband's credit cards and her credit cards. R. 1965. He claims, through the presentation of evidence from the Western Union investigation, that Ms. Watson was a co-conspirator in Mr. Aleksey's actions involving the husband's credit cards therefore her claim that it "cost her" that money, particularly from her husband's credit card was knowingly false. In support of this "knowledge", the Applicant asserts that the SLED statement, Applicant's 20, declared "he got $75,000 of my husband's and $3,000 from another... the money he took was off my husband's credit cards for a total of 4,500..." Applicant's Exhibit 21 reveals on November 19, 1997, Ms. Watson had claimed a third party (Mr. Aleksey) had stolen approximately $22,000 from credit cards [p. 5, 11/19/97], and said "Barclay stole she and her husband's credit cards, first charged $11,000 and later $12,000." Applicant Exhibit 21, p. 6 (11/13/97 10:52 entry).

The Western Union exhibits, Applicant's 13-16, revealed that Mr. Aleksey voice was identified with an October 1, 1997 fraudulent transaction involving the use of Andrew Watson's (Lisa Watson's husband) credit card and a wire transfer of $7,500. It is clear that the information was that Lisa Watson was involved to the extent that she received and cashed the checks in Atlantic City on October 1, 1997.

Solicitor Bailey declared that he had an open file policy and would have provided the information that he had received to the defense. PCR R. 1347, 1353. He said he did not correct it because he accepted it and there was no reason to think she was not telling the truth. PCR R. 1348. Solicitor Bailey stated that Mr. Aleksey would go to the different businesses and do the paperwork in their name and that they would go in and sign the documents. PCR R. 1349.[52] Solicitor Bailey did not dispute that Ms. Watson wrote or cashed the checks, but Solicitor Bailey stated "as far as the specific dollars and cents and exactly how they came out, it wasn't something I was particularly interested in." PCR R. 1352. Solicitor Bailey stated:

> My attempt was to show in general terms the character of Mr. Aleksey in the penalty phase of the trial, that he had a pattern of conduct of coming in, taking up with different women who were at a low point in their lives...but generally had money or assets or ability to get money and that together they would go out and do things inappropriate, and people would get taken advantage of, including the women he was with...

PCR R. 1354. When asked to show how the Western Union transaction took advantage of her, Solicitor Bailey stated, "I didn't ask her that. My question was how much did it cost her. In response to that she said it included a loss to her husband's credit card which she attributed to

[52] Throughout his brief and hearing he contends Applicant's 20 states $7500 was lost from her husband's credit card. A review of the document reveals either 9500 or 4500.

some action on Mr. Aleksey's part." PCR R. 1354. Solicitor Bailey stated he did not know if the $42,000 she said she was out included the Western Union $7500. PCR R. 1355. He clarified that he did not audit her transactions, but denied that he knew who got the Western Union $7500 and "I don't know what happened to the money...or whether he profited from it." PCR R. 1358-59. Solicitor Bailey re-asserted that he always intended to suggest that Ms. Watson was intimately involved in the actions and had received a benefit. PCR R. 1420. A review of the Solicitor's penalty phase closing argument is consistent with his understanding of the facts and his theory. R. 2109-2110 ("used them, abused them, took them for all he could...a parasite on women...lived off of women he has taken in...bled them dry...takes their money..."); see also R. 2112-13 ("Lisa Watson...conned into leasing this White Mustang for Mr. Aleksey...he scammed her..."), 2122:12-16 (that's his modus operandi..."). The Applicant has failed to show knowing use of false testimony under Giglio. Relief on this ground is denied.

C. Brady Claims

The principles governing Brady claims are well-settled. "[T]he suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." Banks v. Dretke, 540 U.S. 668, 691, 124 S.Ct. 1256, 157 L.Ed.2d 1166 (2004) (quoting Brady v. Maryland, 373 U.S. 83, 87, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963)). The Supreme Court has consistently held that the prosecution's duty to disclose evidence material to either guilt or punishment, i.e., the rule announced in Brady v. Maryland, applies even when there has been no request by the accused. Strickler v. Greene, 527 U.S. 263, 280, 119 S.Ct. 1936, 144 L.Ed.2d 286 (1999); United States v. Agurs, 427 U.S. 97, 107, 96 S.Ct. 2392, 49

L.Ed.2d 342 (1976). This duty also applies to impeachment evidence. United States v. Bagley, 473 U.S. 667, 676 & 685, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985).

Under clearly established Supreme Court precedent, there are three elements to a Brady claim: (1) the evidence must be favorable to the accused, either because it is exculpatory or because it is impeaching; (2) the evidence must have been suppressed by the State, either willfully or inadvertently; and (3) the evidence must be "material," i.e., prejudice must have ensued from its non-disclosure. Banks v. Dretke, 540 U.S. at 691. Evidence is "material" under Brady where there exists a "reasonable probability" that had the evidence been disclosed the result at trial would have been different. Banks v. Dretke, 540 U.S. at 698.

The Applicant claims that Solicitor Bailey violated the mandates of Brady v. Maryland in failing to disclose evidence which revealed Lisa Watson involved in a fraud scam with Mr. Aleksey involving her husband's credit cards.

Solicitor Bailey consistently testified that he maintained an "open file" policy and made the file available to them. PCR R. 1702-03. Further, SLED Agent Darnell testified that Attachments 35 in the SLED Report (Applicant's Exhibit 83) included the FMC summary subpoena, letter from Solicitor Bailey dated January 7, 1998, including the six page summary from FMC which is the same as Applicant's Exhibit 21. PCR R. 1679-80. He stated that it would have been there on March 6, 1998.

SLED Agent Kenneth Mears indicated that they contacted Western Union about Mr. Aleksey and Lisa Watson's involvement in the Western Union scam involving her husband's credit card. PCR R. 1570-71. Agent Mears acknowledged that in her statement to them (Exhibit 21) she indicated she was a victim of the scam. PCR R. 1571-72.

Solicitor Bailey stated that his practice "because there were hundreds of documents in the file, some probative, some not, but rather than try to make a call, I've got an open file policy and transmitted everything I got to the defense and sent it off to the defense". PCR R. 1347. However, Agent Darnell was unsure if Solicitor Bailey was provided with the letter or the tape. PCR R. 1655-57.

The Applicant contends that both trial Counsel testified that they had not seen the materials included as Applicant's Exhibits 14-16[53]. PCR R. 256, 1043.

At the hearing the Applicant indicated that Applicant's 15 was neither in the prosecution's file or the defense Counsel's file. PCR R. 254. However, he asserted that it was in the SLED file. Id.

Counsel Sims stated that he did not recall any fraud activity with Western Union by Lisa Watson. PCR R. 260, 272.

Mr. Sims stated that if he had this information about her increased involvement with Mr. Aleksey on the fraud, they could have shown, it would have made their cross-examination about her involvement with him stronger. PCR R. 277-78. He stated that when they spoke with Mr. Aleksey and asking him about information on these women, "we had no idea that these kind of things were going on because we weren't told." PCR R. 278. However, it was acknowledged that Ms. Watson's statement (Applicant's 20) was in trial Counsel's file. PCR R. 295.

Mr. Sims stated on cross-examination that it was not important to the defense to suggest that she made inconsistent statements about the amount of money she had lost at the hands of

[53] In his brief, he also identifies Applicant's Exhibit 13. However, Exhibit 13 was an October 22, 2002 affidavit obviously prepared prior to the PCR action. As to Applicant's 14, there is no evidence the state ever received the August 11, 1998 letter memorandum by Patten, only the Jan. 7, 1998 letter, Applicant's 15.

Mr. Aleksey. Mr. Sims stated the theory was to show that Ms. Watson was having a good time and involved and was now scorned. PCR R. 638. He said inconsistent statements were not the focus of the defense theory. PCR R. 639.

Similarly, Counsel Stone did not have memory of receiving the Western Union material or letter to Agent Mears. PCR R. 1041-43. He felt, though, that it was something that could have been used in cross-examination.

This Court finds, as Respondents conceded, that information concerning Lisa Watson's involvement with Mr. Aleksey in securing monies for Mr. Aleksey from the fraudulent use of her estranged husband's credit cards is the type of evidence required to be disclosed under Brady as potential impeachment material. See also U.S. v. Bagley, 473 U.S. 667, 676-77 (1985). Assuming arguendo that Solicitor Bailey never received the Patten documents from SLED, this would not have relieved his responsibility from disclosure of the letter to Agent Mears from Patten. See Kyles v. Whitley, supra.

If the Patten letter was not expressly revealed to the defense, the Applicant must show, but for the non-disclosure, the result of the proceedings, either the guilt or penalty phase would have been different. Clearly, Lisa Watson procured the vehicle ultimately used in Sergeant Lingard's death for Mr. Aleksey. Any impact of impeachment of her in guilt would have had no impact on the guilty verdict. The same can be said about "her losses" or involvement with Mr. Aleksey in procuring the monies from the husband's credit card. First, Mr. Aleksey would have known about the shared involvement with Ms. Watson, since even under the defendant's theory they were together. Under the defense and state theory, these inconsistencies would not affect the ultimate verdict in the penalty phase where Ms. Watson was merely a part-victim, part-

participant in the state's theory as well. Importantly, Mr. Aleksey was a co-conspirator in these activities with Ms. Watson, and it was evidence from Ms. Watson's statements that she was asserting a loss to herself, including some matters from the husband's credit card. Further, what is equally implicit in the claimed loss from the use of the husband's credit card also is the same loss as the responsibility for the Mustang. In each, her involvement led to her financial obligation to repay the loss. Nevertheless, the alleged failure to disclose the matters, where evidence of her claimed actions in the husband's credit card had been revealed in her statement and the FMC documents, does not undermine confidence in the verdict under the Kyles test. The Applicant's claim on this ground is denied.

D. Ineffective Assistance of Counsel, re: Lisa Watson

Mr. Aleksey contends that Counsel was ineffective in the following particulars:

A. Failed to impeach on inconsistent statements concerning the purchase of the Mustang.

B. Failed to impeach as to statements when she reported car stolen.

C. Failed to impeach about when she last saw Mustang.

D. Failed to reveal that she had participated in use of husband's credit card.

E. Failed to impeach on inconsistent statements about pointing the gun.

The Applicant has failed to prove a Sixth Amendment violation related to the investigation and cross-examination of Ms. Watson.

As stated previously, Mr. Aleksey asserts evidence existed that Ms. Watson had visited the dealership on more than one date to sign the documents, based upon the dates on the "Chris

Koch Ford" documents, Applicant's Exhibit 18. Defense Counsel had possession of these materials. PCR R. 292. Mr. Sims asserted that he did question Ms. Watson about whether she ever actually reported the car stolen. PCR R. 298. He stated he used the "Chris Koch Ford" and FMC documents to show that she had been calling in and that she claimed Mr. Aleksey was related to her. PCR R. 298, 300; see R. 1282-84. Mr. Sims stated that he used these documents to bring out that FMC had been making contact with her to try to find the car. PCR R. 300. Mr. Sims felt that he had developed that she had not told the truth to FMC about the whole ordeal. Mr. Sims stated that he chose to reveal Ms. Watson's complicity in the case in that manner. Mr. Sims stated that their whole theory was to show all the women had complicity with Mr. Aleksey and were buying things for him. PCR R. 301. Mr. Sims felt he tried the case appropriately, although he did not recall having the police report. Applicant's 17; PCR R. 302.[54]

Clearly, this information would have questioned her statements on when she actually reported the vehicle stolen and her credibility. However, as noted above, there were indications that prior to November 13 she had made direct contact with FMC, to wit on October 15, 1997, and had earlier contact with Chris Koch Ford, and spoken with a detective from Paul's Township. These could have been available to the prosecutor to rehabilitate and were available within the information possessed by the defense in Applicant's Exhibit 21. Similarly, the inconsistency in the use of "lent" in the November 13 incident report and "stolen." during trial. Clearly, at the time of the December 31, 1997 incident, Mr. Aleksey remained in possession of the vehicle. It cannot be said, other than for simple impeachment of Ms. Watson that any value

[54] However, the defense did have the FMC Report, Applicant's 21, which revealed that Ms. Watson filed a police report on November 13, 1997 with the 8th District. Applicant's Exhibit 17, p. 5 [11/19/97 entry].

would develop from enhanced impeachment of Ms. Watson by this information. The jury understood her limited role and that she clearly was a pawn in Mr. Aleksey's varied schemes which resulted in his possession of the vehicle and monies from the Watsons.

Similarly, he contests the alleged failure to impeach her inconsistent statements on when she last saw the car of the date she let Mr. Aleksey borrow it, when she may have seen it in his possession afterwards while scheming with Mr. Aleksey on her husband's credit cards. As stated above, Mr. Sims' theory was to develop that she was involved with Mr. Aleksey, not to develop that she had claimed more or less loss from their brief relationship or the extent of the time period of their relationship. As Mr. Sims stated, the theory was to show the complicity of Ms. Watson with Mr. Aleksey. PCR R. 636-38.

Concerning the concept of putting the gun to her head, the Applicant contends this should have been impeached with her statement to SLED, Applicant's Exhibit 20, which mentioned the "gun to head" incident, but stated, unlike her testimony that he was crying (Applicant's 20), rather than laughing. R. 1962-63, 1966. Although inconsistent, Counsel developed that Mr. Aleksey was not serious with his comment on cross-examination. R. 1966. Clearly, this strategic decision could not be deemed ineffective.

The Applicant's attempt at retrospective hindsight does not reveal either deficient performance or prejudice. Counsel's actions were based not only on information they had received from the state, particularly the FMC reports, the SLED statement, and Chris Koch paperwork, but also Counsel's conversation with the client which revealed Mr. Aleksey as an active co-participant. Counsel's strategy was not deficient in failing to pursue each inconsistency in her testimony where it varied with their understanding. Counsel did reveal that

Ms. Watson was aware of the false information in the paperwork given to obtain the Mustang, although she claimed not to fill it out. See R. 1284-85. Her testimony was adequately questioned to the extent necessary for their strategy. The Applicant has failed in his burden of proof to show ineffective assistance of Counsel.

Similarly, as to the financial loss she allegedly had from her relationship with Mr. Aleksey, the variance between the statements to FMC, SLED, and her trial testimony reveals great disparity in her own perception of loss. The problem is that loss did occur, but with some involvement by Ms. Watson under all theories. The inquiry is, 'is it reasonably likely that the jury could have felt Ms. Watson was completely free of involvement in these matters?' The record as a whole would suggest they reasonably could not. However, even if they may not, Counsel's omissions do not, to a reasonable probability, show that the result of either guilt or sentence would be different. The Applicant has failed in his burden of proof.

SUMMARY AS TO WATSON CLAIMS

In Ground Q (4), the Applicant maintains that the State knowingly failed to provide to trial Counsel evidence of fraud involving the State's witness Lisa Watson. While the Court finds the Applicant has successfully shown that some of the evidence was not disclosed to trial Counsel and that the evidence is of the type that is required to be disclosed under Brady as potential impeachment material, this Court finds the Applicant has failed to show that, but for the non-disclosure, the result of the proceedings, either the guilt phase or the penalty phase, would have been different. Therefore, the Court denies the Applicant's request for relief with respect to this Ground.

The Applicant claims he was denied due process of law as a result of the prosecution's presentation of false testimony and their failure to correct the false impression created by that testimony. In order for the Applicant to succeed on under these grounds, the Applicant must show (1) the witness gave false testimony; (2) the falsity was material in that there is a reasonable likelihood that it affected the judgment of the jury; and (3) the prosecution used the testimony knowing it was false. Giglio v. US, 405 U.S. 150, 92 S.Ct. 763 (U.S. 1972). This Court finds that with regards to each of the Grounds listed in his Application for Post-Conviction Relief, the Applicant has failed to meet his burden with respect to Giglio, particularly that the jury's judgment was affected. Therefore, the Court denies the Applicant's request for relief with respect to Ground R.

The Applicant claims he was denied the right to effective assistance of Counsel during the guilt phase (Ground O) and the penalty phase (Ground P) of the trial, and again, the Applicant lists numerous instances of what he believes amounts to ineffective assistance of Counsel. This Court finds that each of the allegations presented to the Court by the Applicant rest entirely on tactical decisions made by trial Counsel. This Court finds that trial Counsel's strategic decisions were not deficient under Strickland, and therefore, the Applicants application for PCR is denied with regards to each of these issues. Further, even if the Applicant successfully established his ground for deficient performance with regards to any of these allegations, the Court alternately finds that the Applicant has failed to establish prejudice which he suffered as a result of the alleged violations.

JAMIE FERRELL CLAIMS

GROUND P (2) **Ineffective Assistance of Counsel at Sentencing**

Trial Counsel failed to properly cross examine and impeach state's witness Jaime Farrell by attacking her testimony with specific instances of prior dishonest conduct and by challenging her false testimony

GROUND P (5) **Ineffective Assistance of Counsel at Sentencing**

Trial Counsel failed to investigate backgrounds of state's witnesses and their allegations. Such an investigation would have provided a substantial amount of impeachment material.

GROUND R (2) **Prosecution Presentation of False Testimony**

The prosecutor knowingly presented false testimony when state's witness Jaime Farrell testified that she did not deposit money into a New Jersey bank.

GROUND R (3) **Prosecution Presentation of False Testimony**

The prosecutor knowingly presented false testimony when state's witness Jaime Farrell testified that she did not withdraw money from a New Jersey bank.

In these allegations, Mr. Aleksey asserts that the State allowed Ms. Farrell to testify falsely and failed to correct the false testimony. Applicant's Memo. p. 47-49. Conversely, he contends that his trial Counsel was ineffective in failing to adequately investigate Ms. Farrell and impeach her with the false testimony. This Court concludes that he has failed in their burden of proof concerning these matters.

A. Jamie Ferrell Testimony at the Sentencing Proceeding

Jamie Ferrell testified in 1996, she developed an intimate relationship with Mr. Aleksey, who she knew as Michael Angelo. R. 1895-96. She stated that she went with Mr. Aleksey to Atlantic City, New Jersey, because he wanted to go away. R. 1896.

Ms. Farrell stated that while there, they opened a bank account at the Commerce Bank. R. 1896. She stated that she put $20.00 into an account. She stated that it was Mr. Aleksey's idea to open the account because he said he had declared bankruptcy and could not open a bank account. R. 1897. She said she had met him in February 1996 and went to New Jersey in April with Mr. Aleksey.

Although she did not know Theresa McCann, she also claimed that she did not know two checks totaling almost $10,000 had been deposited in her account. R. 1898. She denied being with him on May 10, 1996, when the checks were deposited. R. 1898:15-16. However, she admitted discussions with him about having money come into the account. Farrell said that Mr. Aleksey told her that he was getting a wire transfer for $10,000 and that she had the routing number for the bank account that had $20 in it. R. 1899. Farrell claimed that Mr. Aleksey then withdrew about $10,000 that she thought was his money. R. 1900. She said "I never spent any of that money. R. 1899.

Ms. Farrell said she "got arrested by the State of New Jersey." R. 1900. She said she had to pay $10,000 and was still paying on it. R. 1902. Ms. Farrell also said that Mr. Aleksey sold her mother's 1985-86 Camero that was worth $5,000 and he kept the money, denying it was sold. R. 1901.

Ms. Farrell stated that they were together for four months and then for two months said he would come back to New York and pick her up (but never did). R. 1901.

She also said that Mr. Aleksey cost her $2,000 when he offered to pay for the transmission on her car that blew up while he was driving. R. 1902. However, he never paid for it. R. 1902.

On cross-examination, Counsel Sims developed evidence that she left her job (as a manager of a convenience store) shortly after she met Mr. Aleksey. She said Mr. Aleksey, known as Michael Angelo, was going to take care of Ms. Farrell and her daughter. R. 1903.

1. The alleged false evidence assertions

Mr. Aleksey now bases his false evidence assertion on two documents: (1) The affidavit from Vincent Caruso, an investigator with Commerce Bank (Applicant's Exhibit 46) and (2) the SLED statement given by Ms. Ferrell (Applicant's Exhibit 50). In Caruso's affidavit, the critical factors were set out as follows:

1) May 5, 1996, Ms. Ferrell opened a bank checking account.

2) "On May 10th Ms. Ferrell deposited a check, number 1826 dated May 10, 1996 in the amount of $4,892 into her account." PCR R. 535. This check was made out to Ms. Farrell and drawn on Theresa McCann's account.

3) "On May 11th, Ms. Ferrell withdrew $4800 from her account..." Id.

4) "On May 13th check number 1846 dated May 10th, 1996 in the amount of $5,000 payable to Ms. Ferrell and drawn on Ms. McCann's account was deposited in Ms. Ferrell's account." PCR R. 535.

5) "On May 14th Ms. Ferrell withdrew $5,050 from the account. Id.

6) "Ms. Ferrell was charged, arrested, prosecuted and convicted of crimes relating to the above transactions." PCR R. 536.

In further support, the Caruso affidavit had attached to it another letter on Commerce Bank letter head dated May 31, 1996. PCR R. 536-37.[55]

The Applicant further relied upon photographs acquired (Applicant's Exhibit 48). [Counsel Sims and Solicitor Bailey all identified Mr. Aleksey being in the photographs when the May 11, 1996 photographs were made with an unidentified female in the car with him on the date when the $4,800 withdrawal made. See PCR R. 555-57, 1394, 1401, 1706-07.

In Applicant's Exhibit 50, Ms. Farrell's SLED statement, p. 2, it states: "He told me he got a wire transfer so, therefore, I withdrew the money..." PCR R. 564-565.

2. Solicitor Bailey's Response

During the PCR hearing, Solicitor Bailey sought to address the alleged variance between Caruso's affidavit which suggested Ms. Ferrell deposited and withdrew the funds with Ms. Ferrell's trial testimony that she was not with Mr. Aleksey when the checks were deposited. Solicitor Bailey stated that he never tried to present the women as anything other than participants in the scams. PCR R. 1397. He stated that she did get arrested for the scam. Solicitor Bailey states "I had no reason to correct something that I felt was correct at the time. That was Ms. Ferrell's testimony, and I think that was an accurate summary of what she testified to. I believed her testimony at that time. I had nothing to my knowledge at that time to indicate that was not a correct statement of the facts." PCR R. 1397-1398.

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[55] Applicant's Exhibit 47, the criminal record "rap sheet" of Ms. Ferrell was run on June 11, 1998 and provided to defense Counsel. It included the Commerce Bank matters. PCR R. 547-548.

Solicitor Bailey acknowledged that some of the information, particularly her thoughts about the wire transfer into the account contrasts with the affidavit that Ms. Farrell deposited check number 1826 into her account. PCR R. 1398-1399. Solicitor Bailey stated the 1996 letter attached to Caruso's affidavit was "his interpretation of what occurred and that may or may not be correct...". PCR R. 1401. Solicitor Bailey further stated at the time she testified, her testimony "was consistent with Theresa McCann's testimony that her checks were taken from her [by Mr. Aleksey]. I had no reason to doubt what had occurred." PCR R. 1411. Concerning the difference as to who made the withdrawals and who did the deposit on May 10, Solicitor Bailey said he "didn't know that there was anything to correct." PCR R. 1413.

B. Giglio – Napue Claim

As set out above, a state denies a criminal defendant due process when it knowingly uses perjured testimony or allows untrue testimony to go uncorrected. Giglio, supra. To succeed, the defendant must show (1) the witness actually gave false testimony; (2) the falsity was material in that there is a reasonable likelihood that it affected the judgment of the jury; and (3) the prosecution used the testimony knowing it was false. Giglio, supra. The Court concludes that the Applicant has failed in his burden of proof.

This Court finds that the prosecution did not know Ms. Farrell's testimony was "false" in the manner presented. Under the state's theory, Ms. Farrell was a willing participant in Mr. Aleksey's scams of fraud. The state brought out that Ms. Farrell was arrested for and responsible for the $10,000 loss and was aware that the withdrawals to her account were made. PCR R. 1397, 1412-1413; R. 1900-1902.

The first variance from the testimony to the Caruso affidavit was whether Ms. Farrell knew and participated in the actual deposit of the forged McCann checks into her account or did she believe that the monies got into the account by a wire transfer. Compare, R. 1899; PCR R. 564-565 (SLED Report, p. 2 [Exhibit 50]); with Caruso affidavit; PCR R. 535-536. Further, Solicitor Bailey, consistent with Ms. Farrell's testimony, stated that "Mr. Aleksey deposits ... he pulls the $10,000 out. He's gone and who gets arrested? Jamie Ferrell." R. 2122.

Upon review of the copies of the forged checks, Solicitor Bailey noted that there was no indication who has signed for deposit of check #1847 made on May 10, 1996, and on check number 1826 for $4,892 it indicated "for deposit only." PCR R. 1428. Specifically, it did not include Jamie Ferrell's signature. PCR R. 1428; see Respondent (State) Exhibit 3; see also Trial Exhibits 84 and 85. Further, at trial, Theresa McCann identified the writing on each of the forged checks as Bayan Aleksey's handwriting. See R. 1870-1871.

Contrary to the claims of the Applicant, he failed to show that the testimony of Ms. Farrell was knowingly false. There has been no showing that Ms. Farrell actually or physically deposited either of the forged checks, particularly when at least one revealed "for deposit only." Second, there is no showing, other than the fact of the arrest for the fraud, that Ms. Farrell's role was different than asserted and was known as such by Solicitor Bailey. The critical issue here is the "knowing use of perjured testimony." As to the "deposit" issue, this has not been proven.

As to the withdrawal issue, Ms. Farrell asserted Mr. Aleksey withdrew the funds, but admitted she knew he was withdrawing it. R. 1900. The gist of her testimony was that her bank account was being used for his funds, since he could not possess an account. With that background to her testimony, and common sense, her participation from her account would be

necessary for him to withdraw the funds. The evidence, in the light most favorable to Mr. Aleksey, was that he was present when the female withdrew the monies. Although she stated to SLED that "I withdrew the money" and that she gave it to him, her testimony was inaccurate, but not materially false, if done at his direction. See PCR R. 1706-1707.

The Applicant further failed to show the discrepancy was material in such a manner that there was a reasonable likelihood that it affected the judgment of the jury in the sentencing proceeding. Mr. Aleksey stole the checks, his handwriting forged the checks, and he personally acquired the proceeds from the forged documents, it is difficult to see how any effect occurred by the mere fact of the Farrell's knowledge in the matter. Mr. Aleksey now claims that he victimized Ms. Farrell and ignored that she was involved in the fraud scam. The problem is that her participation in the fraud scheme was recognized by the jury to be inconsistent since it resulted in her arrest and responsibility for the proceeds. Assuming the witness's "false testimony" was correct, there is no reasonable likelihood it affected the judgment of the jury.

In conclusion, the Applicant claims he was denied due process of law as a result of the prosecution's presentation of false testimony and their failure to correct the false impression created by that testimony. In order for the Applicant to succeed on under these grounds, the Applicant must show (1) the witness gave false testimony, (2) the falsity was material in that there is a reasonable likelihood that it affected the judgment of the jury, and (3) the prosecution used the testimony knowing it was false. Giglio v. US, 405 U.S. 150, 92 S.Ct. 763. This Court finds with regards to each of the Grounds listed in his Application for Post-Conviction Relief, the Applicant has failed to meet his burden with respect to Giglio, particularly that the jury's

judgment was affected. Therefore, the Court denies the Applicant's request for relief with respect to Ground R.

C. Ineffective Assistance of Counsel Claim Concerning the Failure to Investigate or Impeach Ms. Ferrell

The Applicant contends Counsel should have sought to impeach Ms. Farrell on her inconsistent statement with SLED about who withdrew the funds from the bank account. See Applicant's Exhibits 50, 83. He alleges Counsel should have investigated the Commerce Bank matter to learn that Ms. Farrell was most probably the author of the starter checks used to withdraw the funds (for Mr. Aleksey). He claims that this revealed that she was a co-conspirator with Mr. Aleksey, not a mere victim.

Counsel Sims testified that the strategy was to develop Mr. Aleksey's role as a non-violent con-man, who used women as willing participants or conduits for his financial gains. Mr. Sims testimony concerning Jamie Ferrell revealed his approach was consistent with her. PCR R. 530-70. Mr. Sims stated that he had been provided with a copy of Ms. Farrell's criminal record and was in trial Counsel's files. PCR R. 546-47. Mr. Sims identified Mr. Aleksey being present in the photographs at the teller when a withdrawal was being made with a female. PCR R. 555-60. It was presented to Mr. Sims that the checks used for the withdrawals were "most probably" Jamie Ferrell's. PCR R. 560-64. Mr. Sims acknowledged that this information could have been used at trial as well as her SLED statement. PCR R. 566. Mr. Sims acknowledged that they had been using bad acts in the trial. However, Mr. Sims stated that he felt there was information in her SLED statement that would hurt them. He also acknowledged that he could have impeached Ms. Farrell on the "withdrawal" matter.

Mr. Sims acknowledged that he discussed with Mr. Aleksey about the involvement of Ms. Farrell in the scheme. Mr. Aleksey told him that she wanted to do it and wanted to go and that they were going to gamble and have a good time. PCR R. 652.

Counsel Stone stated that he is not sure, in hindsight, how relevant these inquiries would have been. He thought it would have been important to know about the conviction. PCR R. 1088. Mr. Stone admitted that at the withdrawal, there were two people in the cars, one being Mr. Aleksey. PCR R. 1205. He stated this clearly shows that Mr. Aleksey is there with the person at the bank. PCR R. 1205-06.

This Court finds that even if Counsel was deficient in failing to point out these inconsistencies in impeachment, clearly there is no reasonable probability the result of the proceeding would have been different. Mr. Aleksey was involved in the fraudulent activity. Counsel Sims, on cross-examination, noted the naiveté of Ms. Ferrell or her desire that Mr. Aleksey provide for her. Further, the fact of the arrest had been presented. Under Strickland no Sixth Amendment prejudice was shown. Relief on this ground is denied.

SUMMARY AS TO FERRELL CLAIMS

In summary, the Applicant claims he was denied the right to effective assistance of Counsel during the sentencing phase of trial and lists numerous instances of what he believes amounts to ineffective assistance of Counsel. This Court finds that each of the allegations presented to the Court by the Applicant rest entirely on tactical decisions made by trial Counsel. This Court finds that trial Counsel's strategic decisions were not deficient under Strickland, and therefore, the Applicants application for PCR would be denied with regards to each of these issues. Further, even if the Applicant successfully established his ground for deficient

performance with regards to any of these allegations, the Court alternately finds that the Applicant has failed to establish prejudice to which he suffered as a result of the alleged violations.

The Applicant also claims he was denied due process of law as a result of the prosecution's presentation of false testimony and their failure to correct the false impression created by that testimony. In order for the Applicant to succeed on under these grounds, the Applicant must show (1) the witness gave false testimony; (2) the falsity was material in that there is a reasonable likelihood that it affected the judgment of the jury; and (3) the prosecution used the testimony knowing it was false. Giglio v. US, supra. This Court finds that with regards to each of the Grounds listed in his Application for Post-Conviction Relief, the Applicant has failed to meet his burden with respect to Giglio, particularly that the jury's judgment was affected. Therefore, the Court denies the Applicant's request for relief with respect to Ground R.

CONCLUSION

Based on the foregoing, the application for post-conviction relief is denied in its entirety. Applicant has failed to show error, or if he established error, he failed to show prejudice such as would support the granting of either a new guilt proceeding, or a new sentencing proceeding.

This Court advises Applicant that if he chooses to appeal, he must serve a notice of intent to appeal within thirty (30) days from the receipt of written notice of the entry of judgment, and file same. His attention is directed to Rules 203 and 227 of the South Carolina Appellate Court Rules for the appropriate procedures.

AND IT IS SO ORDERED THIS 4 day of [illegible] 2010

Diane S. Goodstein, Circuit Court Judge
First Judicial Circuit

[illegible] South Carolina

5223

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	)	CA No. 00-CP-38-628
	)	
BAYAN ALEKSEY, #5059	)	
Applicant,	)	APPLICANT'S MOTION TO ALTER AND
	)	AMEND JUDGEMENT PURSUANT TO
v.	)	SCRCP RULE 59
	)	
STATE OF SOUTH CAROLINA	)	
Respondent.	)	
	)	

I. The Purpose of This Motion.

The purpose of this Rule 59 Motion is to request that the Court reconsider the findings and rulings so that issues raised and facts presented by Mr. Aleksey are adequately addressed for preservation and appellate review should the trial court not find an alteration of the judgement appropriate. See Pruitt v. State, 423 SE2d 127 (1992).

To begin, Mr. Aleksey reasserts his objection to the fact the Court's Order is essentially an adoption of the state's proposed Order and not the product of the trial judge's independent rulings or findings. Hall v. Catoe and Simpson v. Moore[1]. This is born out by a page by page comparison between the two which reveals that there are few substantive changes except to the portions of the final Order at pages 44-45, page 182 and the addition of six footnotes and the deletion of one footnote out of approximately 260 pages of rulings and findings.[2] Because of the similarity between the proposed Order and the Court's Order, Mr. Aleksey's Rule 59 Motion will be strikingly similar to the Objections filed regarding the proposed Order.

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[1] Hall v. Catoe, 601 SE2d 335 (SC 2004) and Simpson v. Moore, 627 SE2d 701 (SC 2006).

[2] The corresponding pages of the proposed Order are found at pages 45 and 185-186, respectively.

Importantly, the changes on pages 44-45 deal directly with a matter brought to the Court's attention via a Motion filed contemporaneously with Applicant's Objections to the Proposed Order. However, even these slight changes neglect to deal with the substantive concerns most fully noted in an affidavit prepared by the Honorable James C. Williams directly contradicting sworn PCR assertions made by one of Aleksey's trial counsel.[3] Further, the changes appearing in the Final Order at page 182 are best characterized as the omission of three paragraphs contained in the proposed Order.

II. General Objection: The Court's Order is not a product of objective, independent judicial decision-making.

The Court's Order is essentially the proposed Order submitted by the state, modified and updated in a handful of minor ways, and signed by the Court. This Court's adoption of this Order, nearly wholesale, is inconsistent with Applicant's right to due process of law and fundamental fairness as guaranteed by the Fourteenth Amendment to the United States Constitution. It is also inconsistent with South Carolina law, which unequivocally requires that *courts*, not *parties*, perform the critical function of objectively assessing the evidence and law in post-conviction relief cases, and formulating even-handed conclusions based on the exercise of sound, independent discretion. *See* S.C. Code §17-27-80 (governing post-conviction relief cases generally) ("The *court* shall make specific findings of fact, and state expressly *its* conclusions of law, relating to each issue presented") (emphasis added); S.C. Code §17-27-160(D) (governing capital post-conviction relief cases) ("the *hearing judge* in writing *shall make* specific findings of fact and state expressly *the judge's* conclusions of law relating to each issue") (emphasis added).

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[3] This Affidavit is being resubmitted following its initial submission on April 1, 2009.

In this case, the Court's Order adopting the state's proposed order *verbatim* compels the conclusion that the Court has not undertaken its own objective review of the grounds for relief, the evidence (much of which has not previously been disputed), the governing law, and applicant's written and oral submissions. Applicant does not reach this conclusion, or make this statement, lightly; however, the state's order is simply too uniformly one-sided, contains far too many gross errors of fact, law, and reasoning, and ignores far too much relevant evidence, for any knowledgeable observer to accept that the Court, after independently examining the issues and the record, believes the findings of fact and conclusions of law proposed by the state to be correct, or even objectively defensible. The Court's Order resolves *every* factual and legal dispute in the state's favor, repeatedly doing so simply by proceeding as if the countervailing evidence or law offered by applicant does not exist. In a case as complicated and broadly ranging as this one, it is inconceivable that one party could be correct about *every* single point of fact and law. Yet that is precisely what the Court has decided. Because the Court's Order is not consistent with the state and federal law principles identified above, and because it is patently unfair, applicant objects.

While it is "common practice to allow for judges to ask a party to draft a proposed order for the sake of efficiency," Hall v. Catoe, 601 SE2d 335, at 341 (SC 2004), the Supreme Court advises against the drafting of findings of fact and conclusions of law by one party in death penalty cases. Id, ("...we strongly encourage PCR judges to draft their own findings of fact and conclusions of law in death penalty cases..."). Further, South Carolina law allows a judge to request briefing and actually provides a procedure in capital cases which is inconsistent with the proposed order being drafted by a party to the litigation. See SC Code Section 17-23-160(D)("Within thirty days from the receipt of the transcript, or if the judge requests post trial briefs, within thirty days from the receipt

of the post trial briefs, the hearing judge in writing shall make specific findings of fact and state expressly the judge's conclusions of law relating to each issue.")

Because of the above cautionary restriction from the Supreme Court, this Court should alter and amend its Order in this case.

III. Particularized Objections.

As noted above, the particularized objections set forth below are not exhaustive. Given the nature of the Court's Order, which was initially prepared as an adversarial brief, then modified to a proposed Order to include a signature line for the Court with changes of phrases like "respondent submits" to "this Court finds," applicant's identification of its errors should not be mistaken as an exhaustive repleading or proof of the merits of the facts provided by the record or the necessary legal conclusions. For the Court's Order to be consistent with due process and state law, this Court must abandon its adoption of the state's order, perform its own independent, objective review of the evidence and law, and generate a ruling which reflects this independent judgement. *See* C. Wright & A. Miller, Federal Practice and Procedure § 2578 (2d ed. 1995) ("All courts agree that finding the facts is an important part of the judicial function and that the judge cannot surrender this function to counsel").

The chart below sets forth the page number of the Court's Order, the statement, finding or conclusion at issue, and the nature of the problem Applicant has identified.

Page	Statement/Finding/Conclusion	Problem(s)
General Objection	Discussion designated "III[4]."	This discussion fails to address any cumulative error analysis related to claims raised in the PCR, *see* App. Brief generally and Third Amended Application for Post Conviction Relief;
35	Trial counsel Stone's assertion that he was obligated to place himself on a court appointment list in a county in which he did not maintain a practice.	This assertion is not supported by the South Carolina rules regarding requirements for appointments in criminal cases in effect in January 1998. In fact, SC Code Section 16-3-26 controlled criminal appointments in capital cases in January, 1998. This statute provides counsel a mechanism to remove himself from an appointment when "he or she does not wish to provide representation in a death penalty case." Nowhere, even after the adoption of Rule 608, is an attorney ever obligated to appointment in capital cases.
38	Counsel Stone testified that Aleksey's claims that his confession was the product of physical brutality was undercut by Aleksey's failure to inform WIS TV of that brutality claim.	However, as indicated in Applicant's 72, a January 6, 1998 article in the Orangeburg Times and Democrat entitled "Man says he didn't kill trooper," reference is made to the taped transcript of the WIS interview in question. According to this article, Aleksey told WIS TV that "he confessed to killing the state trooper after being beaten and threatened by the police." This is consistent with his telephone notes provided to Counsel Stone's notes of March 23, 1998, see Applicant's 2, and is corroborated by Aleksey's tearful state during the recording. The two hour gap between his denial and his confession is otherwise unexplained.

[4]It appears that this portion should be designated "IV" as the proposed Order contains two portions marked "III."

44-45	Discussion of Stone's appointment in relation to SC Code Section 16-3-26 and with Rule 608.	This analysis ignores the fact that Stone repeatedly asserted that he was obligated to take this capital appointment, "according to court rules." In fact, no lawyer in South Carolina has been obligated to accept a capital appointment under either the statute or 608 appointment rules. Further, Mr. Stone's testimony is specifically contradicted by the sworn affidavit of now Circuit Judge James C. Williams who specifically indicated the appointment was not an obligatory one but instead one made to assist Stone in the development of his fledgling private practice. Even though this affidavit was provided more than 10 months prior to the signing of the Court's Order, no reference to this affidavit or to the possible inaccurate nature of Stone's testimony is made. See footnote 3, supra. Applicant further asserts that all litigants and the court are obligated to see that evidence presented is accurate, notwithstanding the lack of any assertion that such inaccuracy is intentional or malicious. In fact, Applicant specifically does not make a claim that this testimony is anything more than incorrect.
46	Discussion of trial counsel Stone's belief, that he could ethically represent Aleksey, as having bearing on the constitutionality of the representation.	Stone's belief begs the question of whether his representation was constitutionally adequate or not for Sixth Amendment purposes. The question of ethics has repeatedly been separated from the question of constitutional adequacy. See Mickens.

46	The statement that Stone was required to place his name on the "criminal list."	SC Code Section 16-3-26, as in effect in January, 1998, allowed counsel to remove his name from appointment in a capital case. Further the order's statement begs the question of whether Stone's status as an assistant prosecutor bars his representation of a criminal defendant; thus, preventing him from being "eligible" for placement on the criminal list. Further, Stone's status did not bar his placement on the "civil list" as an alternative means of public service through court appointments. Finally, as mentioned above, Rule 608 was not even in effect at the time of this appointment.
57	There is no support in the record for Applicant's claim that Stone represented Trooper Lyn Stack..	However, in the PCR transcript page 792, lines 9-18, Stone unequivocally testified that he represented Trooper Stack
50-64	Discussion fails to articulate any legal test defining an "adverse effect."	At least two distinct legal standards exist in the federal court system defining an "adverse effect" in the conflict scenario. The majority of the circuits find that an adverse effect occurs when counsel foregoes a "plausible defense" in conflict with counsel's other loyalties. The minority requires that the "plausible defense" be "reasonable." see App. Brief 86-87..

64	"Mr. Stone also performed work for the South Carolina Insurance Reserve Fund, which insures state agencies, including detention facilities and the Department of Public Safety. It is un-controverted that Mr. Stone disclosed these matters to Mr. Aleksey and to the court repeatedly; and it is undisputed that Mr. Aleksey was advised by and examined by the Court three times regarding Mr. Stone's other representations."	This statement misconstrues the fact that Mr. Aleksey was never advised regarding pitfalls inherent in these conflicts by either Stone or the Court. To the contrary, the fact that these issues were raised *three times* clearly demonstrates both counsel Stone and the trial court's acute awareness of an inherent actual conflict of interest on Stone's part. Further, the lack of advice provided to Aleksey by independent counsel regarding these conflicts creates a Cronic situation as discussed in Applicant's brief-115-117. Finally, Aleksey's IQ was tested in the low 70's.
64	Mr. Stone's work for the Insurance Reserve Fund was disclosed to Aleksey repeatedly and he was examined by the Court three times regarding these "other representations."	The IRF work was only discussed during the February 2, 1998 hearing. In neither of the other two hearings (May 20, 1998 and August, 1998) was the IRF work discussed. In fact, Aleksey was never "examined" by the court about the IRF conflict at the February 2, 1998 hearing.
Footnote 8 on page 64	"It should be noted that Stone never served as a prosecutor in Orangeburg County."	A prosecutor represents the interests of the State of South Carolina. See SC Code Section 1-7-350.
71	Sims indicated that he spoke with Stone about the conflicts of interests.	However, during PCR testimony, pages 611-612, Sims indicated he never spoke with Aleksey about these conflicts.
Footnote 9, page 73	It is erroneous information that a venue change to Beaufort County would aggravate the conflict regarding Stone's status as a prosecutor.	A venue change to Beaufort County would have aggravated the conflict as the state has repeatedly sought to lessen any conflict in the case by reference to the fact that Stone did not prosecute in the circuit where Aleksey was tried. See footnote 8, page 64 of this same Court's Order. Also, a venue change to Beaufort would have been statutorily precluded under SC Code Section 1-7-370, cited in footnote 5 of the Court's Order.

Footnote 10 & 11, page 73	Brutality claims were not raised because of a lack of evidence and Aleksey's own inconsistent statements.	Stone could not raise these claims whether supported by evidence or not, because of his conflict of interest. He acknowledged that conflict during discussions held with Aleksey concerning lawsuits filed against various government agencies months before the criminal trial. PCR, page 736-737.
Footnote 11, page 73-74	Stone was not authorized by his criminal appointment to bring a civil suit on Aleksey's behalf.	A court appointment on a criminal matter does not preclude a civil lawsuit on that client's behalf. A lawyer's license is sufficient to allow the initiation of an appropriate claim in a civil venue. In fact, the ABA guidelines encourage death penalty counsel to do all necessary on behalf of a client, including filing civil suit to collaterally litigate claims. See ABA guidelines for Death Penalty Cases 2003 Introduction, Hofstra Law Review Vol 31, 913 at 923-924 in contrast to note 11 of Court's Order. Here, Stone admitted his conflict prevented him from such litigation; thus, preventing Aleksey from the assistance of counsel as envisioned by the ABA guidelines. There was never a waiver of this actual conflict regarding the civil lawsuits and Stone's allegiance to certain state agencies.

Footnote 12, page 74	Aleksey did not present evidence that proper advisement would have led to a different result.	South Carolina law is clear that a *per se* Sixth Amendment violation occurs when there exists an "actual conflict of interest." See Thomas v. State 551 SE2d 254, 256 (2001)("Although petitioner initially waived a conflict of interest, once it became clear an actual conflict existed due to the plea bargain, counsel should have either withdrawn from representing one or both of them or acquired another waiver covering this specific conflict.") Here, no evidence exists that Aleksey waived any actual conflict which arose due to Aleksey's filing of the lawsuits against the government agencies Stone represented.
Footnote 14, page 76	The contradiction in the assertion that the confession was the product of physical coercion and a promise of a benefit.	There is nothing mutually exclusive about coercive interrogation tactics involving both offers of physical harm and preferential treatment. In fact, the US Supreme Court recognizes both types of coercive behavior in the discussion contained in Miranda v. Arizona, 384 US 436 (1966).
79	There is no showing that the confession was induced by force.	See Applicant's number 2, Aleksey's letter to Stone where Aleksey indicates that "they beat the shit out of me." Also see Applicant's 72, a January 6, 1998 article in the Orangeburg Times and Democrat entitled "Man says he didn't kill trooper," reference is made to the taped transcript of the WIS interview in question. According to this article, Aleksey told WIS TV that "he confessed to killing the state trooper after being beaten and threatened by the police."

79	The order states Aleksey was never given leniency by being moved.	However, corrections officials commonly move inmates to solitary confinement as punishment. Aleksey's move in the opposite direction from solitary to general population is clearly a reward.
80	Stone did not argue inducement by promise because he believed a Miranda violation was a better argument.	Stone never argued a Miranda violation to the jury. Clearly, counsel is able (and obligated under these facts) to argue the involuntary nature of the confession to the jury as a way of explaining Aleksey's confession. Again, noting the coercion of a beating, the inducement of the move to general population and the absence of Miranda are not mutually exclusive. Stone never argued any of these or offered any explanation for the confession.
82-86	Discussion about the argument regarding pre-trial publicity.	The order does not reflect the extent of the pre-trial publicity. Absent is both the number of articles disseminated about this matter and the saturation of this media into the jury's minds. See Applicant's 72 and Applicant's Memorandum, pages 55-71 (56 of 65 potential juror's questioned were exposed to this publicity including all twelve jurors who sat on the case.).
85	Order states that trial counsel did not change venue as a strategic move.	This position defies logic as the deceased was local and Aleksey was not. Coupled with the incredibly voluminous, negative, pre-trial publicity, nothing is reasonable about such a strategy.
93-94	Discussion about the failure of trial counsel to question potential jurors concerning their views concerning the death penalty.	The argument ignores any discussion of US v. Cronic, 466 US 648 (1984), the only case relied upon by Aleksey in his memorandum. (Finding 6th Amendment violation when case not subjected to any meaningful adversarial testing.)

100-107	Discussion about juror 144	The order ignores the thrust of the argument that trial counsel ignored their own judgement to "get rid of her" in preference for a lay person's opinion that this person would be a good juror. See Applicant's 61.
Footnote 21, page 102	"In Applicant's Exhibit 61, the notes are husband-military police-get rid of, leader, family health center, knows injured."	This exhibit clearly says that this juror knows "Lingard," the deceased in this litigation. Further, Stone's testimony at the PCR, page 1160, line 7, corroborates that Juror 144 knew the victim.(... "that she knows Trooper Lingard.")
108-112	The Court's Order references State v. Hicks for the proposition that a matter must be raised and ruled upon to be properly raised on direct review.	This order ignores the fact the conflict issues were raised, by the prosecutor, and ruled upon by the trial court. This should have been raised on direct appeal by appellate counsel. Further, trial counsel's judgement was blinded by the very conflicts at issue before the court.
108-112	This poriton of the Court's Order discusses the conflict of interest issues.	The portion of the Court's Order completely ignores the issue of the un-waivable nature of the conflict. Unwaivable conflicts have been found in both state and federal court, and by the US Supreme Court. In fact, the "prejudice" concerning an un-waivable conflict is exactly as described by CJ Rehnquist in Wheat when he states that: "(n)ot only the interest of a criminal defendant but the institutional interest in the rendition of just verdicts in criminal cases may be jeopardized..." by severe conflicts." 486 U.S. 153, 160 (1988).

121-122	The Order discusses the prosecutor's proposed rebuttal to Applicant's proffered adaptability evidence.	However, the Order ignores the fact that "prison condition" testimony is inadmissible unless very narrowly tailored in such a way which was not envisioned by Solicitor Bailey. See State v. Burkhart, 640 SE2d 450 (SC 2007). In fact, Solicitor Bailey's canned rebuttle to James Aiken's adaptability testimony was subject to much criticism in State v. Bowman, 623 SE2d 378 (2005).
122-134	The Court's Order suggests that the testimony offered at PCR from the social worker is cumulative to that provided at trial.	However, the proposed order ignores the fact that the mitigating social worker provides expert opinion through psycho-social analysis. This is in contrast to a mere recitation of facts, as provided by Ms. Aleksey. See Council v. State, 670 SE2d 356 (SC 2008) ("Even if trial counsels investigation could be deemed sufficient or adequate, we believe trial counsel also failed to present any significant mitigating evidence. Trial counsel's mitigation presentation consisted solely of Respondent's mother's extremely limited testimony.")

141	The Court's Order finds that trial counsel's strategy was to show that other acts were consistent with their theory that Aleksey was criminal, but non-violent.	However, this is unreasonable because no investigation was done into these other acts. Proper investigation would have shown these women were co-participants in these criminal acts, even if they were the only ones convicted at the time of Aleksey's trial. It is also unclear the state could have proven the acts by clear and convincing evidence. Further, this strategy is unreasonable because the "door opening" also opened the door to the shooting incident described by Luis Cruz. Trial counsel had no way of knowing that the state would not offer Mr. Cruz's testimony during the guilt phase after trial counsel unreasonably opened the door to Mr. Aleksey's "other acts."
142	The portion of the Order concerning the purchase of the Lexus and the motorcycle is incorrect.	The Lexus purchase involved Sara Pivero. Further, the motorcycle was purchased by Theresa McCann for Aleksey.
142	The Order incorrectly discuss Bayan Aleksey holding a gun to Yelena Batkilina.	However, the Court is probably attempting to address the testimony concerning Aleksey holding a gun on Sara Pivero and then curling up in a fetal position.
Footnote 31, page 154	This note indicates that warrants have not been produced despite the reference to warrants in Keith Randall's affidavit.	However, it is the experience of counsel that unserved warrants are not always a matter subject to public awareness. In fact, many jurisdiction decline to provide such information because of the pendency of a criminal investigation.

154-162	The Court's Order finds that no deficient performance existed concerning the cross-examination of Glory Vee Perez.	To the extent there is a factual finding involved in the decision that prong one of Strickland was not satisfied, an objection is raised. The information gathered by PCR counsel clearly provided substantive evidence of Glory Vee's motive to avoid apprehension as well as her identity as the driver of the automobile (items found on the driver side which belonged to her). Further, this information, at the very least, would have impeached her testimony that Aleksey was the driver and shooter. Applicant's 12-13.
166	The Court's Order also finds a lack of prejudice regarding the cross-examination opportunities missed by trial counsel.	However, the paperwork involving the "mutual scam", as referenced in the order, was never presented to the jury. This alone establishes the deficiency of trial counsel in their investigation of Glory Vee. Regarding prejudice, this evidence of the "mutual scam" also defeats the state's "number one reason" offered for Aleksey's guilt. Applicant's brief 7-17.

168-170	The order discusses the "traffic tickets" and the currently still outstanding bench warrant interchangeably.	The order incorrectly confuses the "traffic tickets" involving Glory Vee with the bench warrant issued against her. As the Court obviously understands, a bench warrant is independent from the underlying court proceeding from which the bench warrant arose. Trial counsel should have used the citations as a basis to request an abeyance in the proceedings to allow an investigation which would have revealed the existence of the bench warrant. Further, the prosecutor failed to seek out the bench warrant as exculpatory evidence demonstrating GV's competing motive to avoid apprehension and evidence impeaching the state's theory of Aleksey's sole "motive to avoid apprehension." Finally, and most importantly, the bench warrant (not the traffic citations) establish without any dispute that the prosecutor engaged in the provision of incorrect information to the jury during his closing argument. (These tickets provided the prosecutor sufficient notice to seek out the Brady information and to refrain from the provision of the false argument during closing.) Applicant's brief 9-10.

183	The Order discusses the issue of Glory Vee cutting a deal and indicates this was a "matter not admitted."	To clarify, the cutting a deal information was "not admitted" in evidence during the trial of Mr. Aleksey. However, it is beyond dispute that Glory Vee did cut a deal to testify against her mother.
183-185	The order analyzes trial counsel's cross examination of Glory Vee Perez' knowledge of Aleksey's background as a matter of sufficiency of cross examination concerning this issue.	However, PCR counsel object to the order's regarding the failure to cross regarding inconsistent statements about GV's knowledge of Aleksey's actions and character because the issue is not whether trial counsel could have crossed better on this issue, but that there was no cross on this issue at all. Applicant's brief 13-16.

187-188	The Court's Order appears to find no obligation on the part of the state to seek or provide any information about Dr. Bang to Aleksey's trial counsel.	PCR counsel object to the order to the extent that it incorrectly excuses the state's failure to seek or provide exculpatory evidence about the Dr. Bang scam considering the existence of sheets of blank checks from a doctor's office in another state coupled with the indicia of fraudulent and forged checks re a Fed Credit Union MCAS account of GV's. Applicant's brief 10-16.
188	The Court's Order finds that the prosecution adequately notified counsel concerning impeachment material.	PCR counsel object to the order because the provision of the letter (re evidence now deemed exculpatory evidence) does not provide the exculpatory or impeaching nature of this information. It only demonstrates an attempt to avoid collateral attack or allegations of ethical violations without the true spirit of fairness or *due* process to the trial defendant. The state has the duty to seek out this information, not trial counsel. (Although trial counsel have the duty to conduct a thorough investigation).

190	The order indicates that there are no warrants outstanding against Glory Vee.	Counsel objects to the portion of the order discussing the Summerfield Suites check. The objection is based upon the statement that there existed no warrants for GV as there was clearly a warrant related to a court matter in Hamilton Township. Further, Summerfield Suites obviously desired to be made whole for the bad checks she wrote; thus, this company and its private security were looking for her. Applicant's brief 12. It must be remembered that the prosecutor's argument centered on the lack of motive of Glovy Vee to flee apprehension to disprove her guilt as the shooter. Either the warrant from Hamilton Township or the knowledge that she was wanted for the other bad acts are sufficient to render this statement false, under any interpretation. She cannot be both wanted and not wanted at the same time. She was wanted and Bailey said she was not. Bailey knew this and conceded as much in the PCR testimony. Thus, his statement was neither "essentially" nor technically correct and a guilty verdict and death sentence can not rest upon such a contrived prosecution. See Riddle v. Ozmint 631 SE2d 70 (2006)
190	The order discusses Glory Vee's knowledge regarding Aleksey's background. (... "Ms. Perez Blackwell did not know *anything* about his past...") Also see similar statement in footnote	The order incorrectly states that GV did not know about Aleksey's past when in fact she was a co-participant of his past conduct occurring during the month of December 1997. The then recent past was still Aleksey's past at the time of GV's statement to SLED and at the August, 1998 trial. Applicant's brief 14.

192-194	The order discusses the obligations of a prosecutor under the Brady line of cases.	Counsel object to the order because it misconstrues Solicitor Bailey's obligation under Brady. See Kyles v. Whitley, 514 US (1995). His obligation is to seek out evidence once put on sufficient notice, as here. Further, the obligation to seek out this evidence held by the government goes further than asking the co-defendant murderer who was co-operating with the state. To accurately understand this obligation in relation to this case, it must be remembered that SLED and Bailey elicited assistance from all of the outside agencies which were cited in the Applicant's claims. Thus these agencies assisted in the prosecution of the case against Aleksey, triggering the due process anlaysis of Brady, Kyles and Napue. See footnote 34 at page 167 of the Court's Order.
208-210	The Order finds that trial counsel adequately cross-examined Sarah Pivero and informed the jury of her involvement in the Lexus scam.	Counsel object to the court finding that trial counsel demonstrated Pivero's wrongdoing in the purchase of the Lexus. To the contrary, trial counsel allowed Pivero to testify, without challenge, that she was duped into purchasing the Lexus. In fact, she pled guilty to her criminal complicity in that matter. However, the jury was never informed of her conviction of this crime involving dishonesty and moral turpitude. As Aleksey's counsel sought to impeach Pivero's testimony, no reasonable strategy existed to excuse the failure to impeach her with this criminal conviction and/or specific acts involving dishonesty. Applicant's brief 31-34.

211-212	The Order characterizes missed impeachment opportunity of Pivero as not deficient and alternatively as non-prejudicial.	Counsel also objects to the characterization of the impeachment opportunities missed by trial counsel. First, it must be remembered that the prosecution considered Ms. Pivero's testimony regarding an otherwise un-corroborated "confession" from Mr. Aleksey as the second strongest piece of evidence in the guilt phase of the trial. Second, trial counsel was unaware of the substance of Ms. Pivero's testimony about the alleged "confession" until the trial as Ms. Pivero either failed to complete a written statement to SLED or the state failed to disclosed this crucial piece of discovery. Third, the unused impeachment material goes to the very heart of cross-examination of a witness such as Pivero; attacking her credibility and truthfulness with disclosure of prior acts of dishonesty. Therefore, the characterization of the foregone impeachment opportunity as non-deficient and non-prejudicial is clearly inaccurate based upon the record developed during the PCR. Applicant's brief 29-30.

221	The Order accepts Solicitor Bailey's PCR testimony that he never sought to present any of Mr. Aleksey's women as innocent people.	Counsel object to the Order's endorsement of the statement by the trial prosecutor in this regard. This statement is flatly contradicted by the prosecutor's presentation during the witness examinations and during his statements made to the jury. "...He used them. Abused them. Took them for all he could take and left them.....a parasite on women....he has lived off of women he has taken in. He has bled them dry." Trial, p. 2109-2110. As a specific example and in contrast to the Order, the prosecution's failure to correct the false and misleading statements about the gun purchase, bonding out of Aleksey and his departure from Batkilina's life reinforces the false depiction of Batkilina as victim instead of a co-participant. Applicant's brief 37-39.

220	The Order holds that the trial prosecutor did not know about various reports of incidents of which the SLED agents were privy.	As proof of Batkilina's status as a co-participant following both the gun purchase and the bond out date, pcr counsel points to the various police reports regarding the scams perpetrated by Batkilina. These scams occurred many months after these other events. In fact, phone records demonstrate that Aleksey remained in contact with Batkilina at least until weeks before his incarceration on December 31, 1997. Counsel objects to the Order's finding that the prosecution did not know about these reports or incidents of which the SLED agents were aware. In fact, an entire US Marshall task force composed of state and federal agents was tracking Ms. Batkilina's crime spree; thus, imputing this knowledge to the very same trial prosecutor who prided himself on traveling to the Northeast to interview witnesses and elicited the assistance of law enforcement concerning Aleksey's background activities. Applicant's brief 37-39.
223	Order finds Batkilina's testimony did not tie date of purchase of gun to date she last saw Aleksey.	Counsel objects to the portion of the order which states Batkilina's testimony did not tie together the date of purchase of the weapon and the date of Aleksey's departure from her life. At trial, she clearly testified she both purchased the gun and last saw him in November, 1997. Trial transcript page 920. This is false as the gun was purchased in 1996 and his departure from her life was November 1997. Although inartfully discussed in the testimony, the impression left with the jury and compounded by the prosecutor's argument was incorrect and should not serve as the basis for a murder conviction and death sentence.

225-226	Order finds state did not falsely present date of gun purchase.	Further, counsel objects to the Order's factual finding that the state did not falsely present these dates. In his closing, the state prosecutor clearly argued that Batkilina brought the gun home, Aleksey disappeared and the gun disappeared. In fact, this presentation reinforced the state theory that Aleksey preyed upon women; an issue which itself had no place in the guilt phase of the trial. Trial transcript 1763, lines 17-19.

243-247	Order applies Strickland prejudice standard in reviewing materiality of Brady claim.	Counsel objects to the finding that the trial prosecutor presented Ms. Watson as a co-participant in the Western Union scam. In contrast, the prosecutor's questions clearly indicate his portrayal of her as a victim of this scam. For example, during his examination of Ms. Watson, the prosecutor refers to the money stolen from Mr. Watson by reference to what the Western Union scam "cost" her. If she was a co-participant, the question would have concerned how much she benefitted or profited from the scam against her husband's credit card. Further, the SLED investigators clearly knew of Ms. Watson's involvement in this fraud. However, the government never divulged any of the letters from West Union or the tape entitled "Lisa Watson Fraud" which was kept in the SLED agent's secret file in his barn in rural South Carolina. The Order correctly notes this information should have been divulged to trial counsel, the Order is objectionable for not clearly noting the material nature of this information towards the impeachment of Lisa Watson. Watson's testimony about Aleksey's theft of the car is untruthful in light of her possession of the car during the Western Union fraud which followed her report of the car as stolen. While unclear why the "stolen" nature of the car had any bearing on the issues in the guilt phase, this false testimony went uncorrected by either the state or trial counsel. The finding that the failure to disclose the Western Union evidence is not reversible defies logic.

253	Once again, the Order adopts trial prosecutor's statement that women were never presented as victims, but as co-conspirators.	Again, pcr counsel object to the Order's endorsement of the trial prosecutor's statement that he only presented the former girlfriends as co-participants in Aleksey's prior bad acts. In fact, these women, Ferrell included, were portrayed as victims. The prosecutor clearly urged the jury to consider Aleksey's victimization of these women when determining the appropriate penalty. Trial counsel objected to this argument in favor of a sentence of execution based upon the treatment of the girlfriends, but this objection was overruled. See trial transcript, 2109-2110.
254-255	Order characterizes Jamie Ferrell's claim regarding who withdrew the money as not a false statement. The Order also applies a Brady materiality standard to a Napue claim.	There is no question that the state's argument about Farrell being a victim of the commerce bank scam is a false statement. Further, the state can not claim ignorance regarding this information when it chose to present Farrell's testimony concerning this crime and her arrest as evidence of Aleksey's character. The only relevance of this evidence to the penalty phase is to demonstrate Aleksey's character. The state urged that this evidence demonstrated his character of victimizing women. This contradicts the pcr testimony of the trial prosecutor that this information portrayed Farrell as a co-participant. Finally, her false trial testimony regarding Aleksey's withdrawal of the money went uncorrected despite Farrell's SLED statement to the contrary. Applicant's brief 47. Finally, the blending of the Brady analysis to the Napue claim is error.

IV. Conclusion.

WHEREFORE, for all of the foregoing reasons, this Court should alter or amend its Order, conduct a review not starting from the framework of the State's brief or proposed order and, instead, generate an Order more accurately reflecting the evidence presented by the record.

Respectfully submitted,

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BY: _____
ATTORNEY FOR APPLICANT

February 26, 2010.

STATE OF SOUTH CAROLINA COUNTY OF ORANGEBURG BAYAN ALEKSEY, #5059 *Applicant,* v. STATE OF SOUTH CAROLINA *Respondent.*	IN THE COURT OF COMMON PLEAS CA No. 00-CP-38-628 APPLICANT'S MOTION TO ALTER AND AMEND JUDGEMENT PURSUANT TO SCRCP RULE 59

I, David B. Tarr, hereby certify that I have served upon the attorney for the respondent one (1) copy of Applicant's Motion to Alter and Amend Judgement Pursuant to SCRCP Rule 59, with a supporting affidavit in the above-captioned case by depositing a copy of same in the United States Mail, first class, postage pre-paid, addressed as follows:

Donald Zelenka, Esq.
Assistant Deputy Attorney General
P.O. Box 11549
Columbia, SC 29211-1549

This the 24th day of February 2010 in Columbia, South Carolina.

David B. Tarr

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF DORCHESTER) 2000-CP-38-0628

BAYAN ALEKSEY,

PLAINTIFF,

VS.

STATE OF SOUTH CAROLINA,

DEFENDANT.

TRANSCRIPT OF RECORD

MAY 4, 2010
ST. GEORGE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE DIANE S. GOODSTEIN, JUDGE

A P P E A R A N C E S:

DAVID TARR, ESQ.
JIM BROWN, ESQ.
ATTORNEYS FOR THE PLAINTIFF

DONALD ZELENKA, ESQ.
ATTORNEY FOR THE DEFENDANT

BONNIE H. KELLY
CIRCUIT COURT REPORTER

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NO.	DESCRIPTION	I.D.	EVID

NO EXHIBITS INTRODUCED

THE COURT: All right. Good morning. Good morning, Mr. Aleksey.

MR. ALEKSEY: Good morning.

THE COURT: All right. And we are on the record in Mr. Aleksey's PCR matter. And this is the applicant's -- Mr. Aleksey's motion to alter or amend the judgement, pursuant to Rule 59. All right.

Who's going to handle it? Mr. Tarr, you going to handle this? Who's going to argue it? Whoever. I mean, it just -- you're just sitting in the -- in that spot.

MR. BROWN: The captain's chair.

THE COURT: That's it. Yes. Exactly. Exactly.

MR. TARR: We'd ask Your Honor for a little direction, for sake of efficiency, in terms of is there anything in particular that the Court would like us to focus on. It is a pretty broad motion, with a number of different issues of varying degrees of seriousness, in our opinion, to the case. And didn't know what -- if there was anything in particular that -- that you wanted us to focus on.

THE COURT: Well, I tell you, I have the motion that you have filed. And I'm not going -- I'm not comfortable directing your argument. I've never done that. I've limited time, but I've never directed an argument.

So, why don't you do this, why don't -- those matters that you would like to highlight, --

MR. TARR: Yes, Your Honor.

THE COURT: -- why don't you do that. The ones that you would like to rely on your brief, why don't you let me know that as well. And -- and I'm happy to proceed in that ---

MR. TARR: Yes, Your Honor.

THE COURT: --- in that way. And with that in mind, if -- when we hear from the -- when we hear from the Attorney General, if based on his argument you want to add something, then you'll do that.

MR. TARR: Yes, Your Honor.

THE COURT: Okay. Is that reasonable?

MR. TARR: Yes, Your Honor.

THE COURT: I'm listening to you.

MR. TARR: And I -- we would just -- just point out from the start, anything I may fail to mention, we do -- we would like to stand on the merits of ---

THE COURT: Of course.

MR. TARR: --- of the motion. Your Honor, I think the thing of the most significance, the thing that we believe that the order does not address at all -- and it may be in part -- partly due to the fact that a piece of evidence that we submitted for ruling came in several years after the final hearing. It's the affidavit of James Williams in regards -- with -- with regards to the appointment of Duffy

Stone as -- as counsel in this case.

THE COURT: Uh-huh. Yes.

MR. TARR: We -- there have been some issues that have come up on this case regarding how he was appointed. And basically, at -- at the PCR hearing, he testified that he was appointed pursuant to court rules.

At the time we were briefing, I think everybody kind of assumed he was talking about 608, because he referred to civil in a criminal appointment list; which would -- the only way that ever came about was through Rule 608.

And come to find out that 608 was not in existence at the time. And so, the State's proposed order was -- was changed to reflect that he was not appointed in that manner.

However, I think the way the order reads, it makes it appear that -- that he was required to place himself on one of these two appointment lists, when in fact there were no lists at that time in Orangeburg County. And it -- I kind of stumbled upon this evidence when I was in Orangeburg.

And I was asking Judge Williams, because I figured he would know how they did things back then, because he was the deputy solicitor back in 1997/98, when Duffy was appointed. And I asked him how they appointed people, and he said that they usually just used the phone book back then. They didn't have 608 back then, and if you

advertised in the phone book, they picked your name out.

He said in this particular case -- he asked me why I wanted to know. I said, Well, we're going to have this issue regarding how Duffy Stone was appointed. He said, "Well, why didn't you ask me? I -- I know how he was appointed."

He actually had given Duffy's name to Judge Houston, and said, "I think this would be a good lawyer." And Judge Houston called him, and he agreed to take the case.

Basically, our position is if it helped the State's argument with regard to the conflict that he was required to take this case and he was appointed like anybody else would have been, you know, just off a list, if that's not the way it happened, then it seems like it follows that it would help our version of -- of our argument about the conflict issue: That he chose to take this case and was offered -- and was not required to take the case.

I mean, he -- he didn't volunteer, but when they asked him do you want to do this, he said "yes." And I just -- I think at a minimum, the order should reflect the way he actually was appointed.

THE COURT: Yeah. I -- I'm with you. Let -- let -- Mr. Zelenka, what about that?

MR. ZELENKA: Well, I -- it's -- when the affidavit came in or was presented to us, we didn't object to the

affidavit. Obviously, Judge Williams at the time was not a judge. He wasn't the one that did the actual appointment. That was obviously up to Luke Brown, who, like many judges, gather names of individuals that they may think was qualified back -- back then.

Interesting, within Judge Williams's affidavit, he states that he was statutorially qualified to accept such an appointment. That's somewhat beneficial to the State, because Judge Williams was recognizing that -- at the time, that there wasn't anything which disqualified Duffy Stone being fully aware -- now Solicitor Stone's -- position.

We don't have any objection, under Rule 59 or any other rule, that the order also reflect the fact as to -- to how Judge Williams thought that Mr. Stone was selected.

However, that doesn't revise why Duffy Stone thought -- and testified as to his reasons for why he thought he had a duty to accept the appointment. Which I think the record appropriately reflects.

He thought, basically, as a lawyer in South Carolina, when the judge called, unless he had an actual conflict of interest, he had an obligation to accept the appointment.

And I think that's what the judge -- in your initial order -- it certainly was our intent in our initial pleadings before the Court to -- to make that reflection, even though we didn't have this particular information.

Although Sims -- Thomas Sims did reference within his testimony why he thought that Duffy was appointed.

So, we think the record, as it stands, probably adequately and appropriately addresses these issues, but we don't have an objection to the additional information going into the order from Judge Williams which is: Stone was statutorially qualified to accept the appointment; there were lists.

I don't know that Duffy Stone was on the list, and he was appointed based upon a recommendation that I made to Luke Brown, which is what he says. That's not contradictory -- anything that's in the judge's original orders. It's essentially supportive of it.

THE COURT: Anything else?

MR. TARR: Well, Your Honor, the reason why we think it's important is because this is a conflict issue. This is an issue we're raising that says that he shouldn't have taken the case. And you've got the -- the office that is prosecuting Mr. Aleksey, a person who is employed by that office is the person who suggested that Duffy Stone be appointed and take this case.

And so, that kind of goes hand in hand with -- especially when you consider the fact that -- that Duffy's saying that "I was appointed like anybody else. I had to take this appointment."

It just goes more towards our argument that this was a conflict, an he shouldn't have taken the case.

THE COURT: Let me -- let me, if I may. And then you all comment if you -- if you feel compelled.

Judge Williams's affidavit didn't add anything to my mind. Maybe -- maybe there was some degree of clarity, but it didn't change anything.

And I distinctly remember the testimony regarding the call. That often happens, and that certainly -- at the time of this appointment, almost as I understand it, if it didn't always happen, it nearly always happened.

I can remember very distinctly it happening in my practice, getting the phone call from the judge, "I need you to ..." -- you know, "there's such and such a case, and you're someone who's qualified. And you -- and I need you to take this case."

We'd actually been in Dorchester County for a week and got one of those phone calls on a capital case. It was: "Welcome to Dorchester County." And I distinctly remember that.

You know, you can say, "Did you not object because there was a conflict?" But in so far as the relationship with the Bar and the Bench, you didn't turn them down unless there was a substantial reason or a conflict that you were aware of. It was not -- it was like a juror

summons. It's -- you like to think of it as an invitation, but it's not really an invitation. It's not really a request. It's just -- it's -- and that is -- that was -- certainly -- at that point in time, that was certainly our custom and practice as I understood it.

I really found Judge Williams's affidavit to be supportive of that practice -- that customary practice. And would -- and have no problem, and think it's appropriate, Mr. Tarr, that the order would be supplemented or amended. I hate to amend the whole thing, but you know, supplemented to reflect that.

What is clear in my mind is that I in no way find that that is any kind of nefarious conduct on behalf of the solicitor's office.

MR. TARR: We're not claiming that.

THE COURT: Meaning -- meaning that Judge Williams and the solicitor said, "Oh, who can we get that we can, like, talk to to throw this case? Or who do I know that's not competent who's going to make it easier?"

I take that as being someone who is potentially available, someone who is competent, someone who is statutorially qualified. So, in so far as my finding would be, while those things -- and -- and I think for your argument, it ought to be in the order.

But I don't find that number one, Judge Williams

dictated to the Court who would be appointed. It was more in the nature of a suggestion. And -- and that was -- that gentleman, Mr. Stone, was the person that was ultimately appointed.

Do -- do you see the difference of what I'm talking about? Because I'm going to look to you to help me with it.

MR. ZELENKA: Yes. Yes, I do. And also, that discussion -- Mr. Sims, who was already the defense counselor representing Aleksey, was a participant in that conversation.

THE COURT: Yeah. Yes. And -- and that -- it doesn't add -- it doesn't add anything, but I think it is important, for purposes of -- of appeal, that that information be in the record -- I mean, be in the order. I really do. So, we'll add that.

Okay. Next. Batting a thousand, Mr. T.

MR. TARR: Your Honor, the next thing that we think is kind of the -- probably the second most significant thing that ---

THE COURT: Okay.

MR. TARR: --- we would like to address -- and I'm going to allow Mr. Brown to do this, because he researched these issues. They involve some kind of different standard regarding *Brady* and *Napue* and *Strickland*. And how we

believe that there are a couple of places in the order that may use the wrong standards.

So, I was going to let Mr. Brown handle that.

THE COURT: Fantastic. Thank you.

MR. TARR: Thank you.

MR. BROWN: And -- and Your Honor, let me tell you, I'm going to try to be succinct, because there's a whole -- a forest has been devoured to discuss some of the issues about the prejudice prong on a *Brady* violation or a *Napue* violation. And these deal with -- and -- and I can give you the pages of the order to two different parts.

THE COURT: Okay.

MR. BROWN: One of them is at 243 and goes over to 244. It involves the testimony of Lisa Watson. And the Court, I think for lack of a better way of putting it, found that there was some error there, but found it wasn't sufficient to grant relief. And that's on both cases.

THE COURT: Probably was an alternative finding, right? Like if -- "if this, then that"?

MR. BROWN: Well, it actually says (as read): "That the Court finds -- its respondents concede that the information regarding Lisa Watson -- that Mr. Aleksey secured monies from Mr. Aleksey, because ---

THE COURT: Whoa.

THE COURT REPORTER: Mr. Brown, you have to read much

slower.

MR. BROWN: I'm sorry. It finds that it is the type of evidence required to be disclosed under *Brady*. And then it says, "assuming arguendo that the solicitor never ---

THE COURT: Okay.

MR. BROWN: -- received the documents from SLED, that this would not have relieved the obligation."

But then it goes on to talk about the prejudice prong and why -- it -- it gives a standard. And then says that we haven't met the standard for their -- and I say "prejudice prong," because this is *Brady*; this is not a *Strickland*.

But -- but none the less, they both seem to have -- whether there was a -- some type of -- at least violation, then whether the violation was sufficient for relief.

THE COURT: Right.

MR. BROWN: And so -- and -- and I can cite you again. It's on 243, where the Court -- where Your Honor discusses this in the order.

THE COURT: All right. Hold on.

MR. BROWN: Yes, ma'am.

THE COURT: Let me see if I can get there. Ah. Got it. Okay. I'm at 243 now.

MR. BROWN: Yes, ma'am.

THE COURT: All right.

MR. BROWN: And the prejudice prong is discussed in the paragraph which I've got as the third full paragraph, starting at the "Patton letter."

THE COURT: Okay.

MR. BROWN: And it may seem pedantic, but the Court -- Your Honor, the order says (as read): "The applicant must show but for the non-disclosure, the result of the proceedings would have been different."

And I -- with all due respect, there's actually just one -- one word that I see really missing, but it makes some difference.

THE COURT: Okay.

MR. BROWN: And it -- when we go through here, it says there's a -- well, it's not one word, one phrase -- that there's a "reasonable probability."

And this is written in much more absolute terms, more like the *Strickland* standard. There was error or deficient performance; and but for the deficient performance, the outcome of the proceedings would have been different. But in *Brady*, we've got there's a reasonable probability.

And of course, the Court's ultimate --

THE COURT: Sure.

MR. BROWN: -- application of that standard's -- the findings you already made factually, is something obviously we'd like you to rule in our favor. We just ask that you -

--

THE COURT: Sure.

MR. BROWN: --- consider whether that was just a typo --

THE COURT: Yeah. I understand.

MR. BROWN: Or -- or re-analyze that with -- and I know it seems minor, but --

THE COURT: No. Not at all.

MR. BROWN: -- it reduces it to a probability instead of an absolute that we have to prove.

THE COURT: Absolutely. Yeah. What about that, Mr. Zelenka?

MR. ZELENKA: Well, if you go back to page 241 --

THE COURT: Yep.

MR. ZELENKA: -- of your order, you're stating essentially what the test is under *Brady*. And at that portion, you're recognizing the importance with the inclusion of the phrase "reasonable probability."

THE COURT: Right.

MR. ZELENKA: Which is the correct test. Implicitly you're applying that test, even though you don't repeat the phrase in full, I would assert, because you're re-referencing *Kyles vs. Whitley*.

And if you -- if you go to one paragraph above the conclusion -- apologize for jumping around. But at page

247, you're talking there about reasonable likelihood with -- within that paragraph right above the -- the "Lisa Watson."

So, correct -- the -- the standard is had the information been disclosed, is there a reasonable probability the result of the proceeding would have been different, that is the correct test under *Kyles vs. Whitley*, and under *Brady* for the -- what they call the "materiality prong." I think that's what you missed of that particular ---

MR. BROWN: And I would agree. I used "prejudice" in a generic sense.

MR. ZELENKA: Well, but it -- it is a prejudice. I mean, it's the same way we look at it.

But it's to make the determination as to whether there was really a *Brady* violation. So, the question is ---

THE COURT: It just -- yeah. I understand.

MR. ZELENKA: --- obviously, did you -- when you initially did your order, were you applying the reasonable probability standard -- reasonable likelihood standard?

My review of the order is that was what you were doing throughout the order. If it wasn't, it needs to be revised. I can't speak to you as to what you were doing, but I had the impression that you were applying the reasonable probabilities standard, although not restating

it every time that -- that clause came up.

THE COURT: Well, it could -- when you look at the sentence, it may even be less than reasonable probability. It's like that it would have been different -- that it could have been different, that it would have been different. You know, that's so generic, that particular sentence.

And as -- as I recall, many of these matters, such as the Patton letter, probably goes -- my impression of many of these things went to the alacrity with which PCR counsel went through this record with a jeweler's loop, more so than what really mattered in this case.

And -- and could have mattered possibly/fancifully in this case, in all candor. It was impressive with regards to my PCR lawyers, I must say. I was -- I was at times amazed.

MR. BROWN: Thank you, Your Honor.

THE COURT: So impressed. But there were many times, counsel, I must tell you, that I -- I really kind of wanted the two of you to get involved in national security for all our protection, and find every possible detail in the world. And I think this may have been one of those instances.

I remember being -- I mean, the detail, the work that you all did on this case is just incredible. And I think

there was a point in time where one of the witnesses had testified that she was a cosmetologist at the time; that she worked in the grocery store. And I was just -- I -- I was in awe. I was in awe that these two young lawyers had been able -- and if it had been in South Carolina, maybe -- you know, maybe.

But you all -- you all went all over the country. If it was on the east coast, didn't matter what piece of information was there, you all had it and looked at it and checked it 45 different ways. It was remarkable. And I think when I hit -- when I found that, I was amazed by it.

This is clearly one of those instances that -- and they were more prevalent at the conclusion of the order, towards the end of the order ---

MR. BROWN: Sure. Sure.

THE COURT: --- than certainly at the beginning of the order, where it was -- it was information -- no question it was different --

MR. BROWN: True.

THE COURT: -- information, just as this one that -- that -- and if we were to have a perfect trial, would have ---

MR. BROWN: Sure.

THE COURT: --- been communcicated.

MR. BROWN: True.

THE COURT: But it could not have made a difference in these proceedings.

And -- and I remember that Mr. Tarr made a marvelous argument, and if there was ever going to be a case, I was really -- which is one of the reasons why it took so very long for me to go through it.

You know, you all -- you did it at the beginning, and you did it at the end. And then there's been some case law that -- interimly, that has not been very supportive of one of your many well thought out theories. And it was this: I remember that early on, that Mr. Tarr made the argument, Judge, we need your patience as we go through this, because there are so many -- aside from the conflict issue, which is a big issue in this case, no question.

But when you said there are many, many differences; there are many, many pieces of this pie. That while each slice of this pie may not be earth shattering, we believe, when you look at all the pieces of the pie, it's earth shattering.

So -- so, this was one of the many, many shards of the broken glass, but it was one of many, if -- if that makes sense --

MR. BROWN: Yes, ma'am.

THE COURT: -- you know, in -- in drafting of -- of an order where -- pursuant to -- to this hearing, this is one

of those areas.

I do not believe, using the reasonable probability standard, that it would have made a difference. It just would not have. And I do not believe that -- yet, that these kinds of issues, these smaller issues, that -- that our courts have made a determination that you can aggregate them.

MR. BROWN: Yes, ma'am.

THE COURT: Wonderful. Thank you.

MR. BROWN: In a similar vein --

THE COURT: Yes.

MR. BROWN: -- we would turn you to the Jamie Ferrell testimony, which the pertinent part appears about 255. It actually starts a little earlier, 254.

And in that one, we -- you're applying what I would refer to as a *Napue* standard for false -- presentation of false information. And again, we're not claiming that it was perjurious in the sense that somebody allowed perjury to be up there, but there was false information that was not corrected.

And -- and Your Honor, again, made, I would say, at least some finding ---

THE COURT: Uh-huh.

MR. BROWN: --- that we proved that there was some falsity presented.

THE COURT: Uh-huh.

MR. BROWN: But that again, there was prejudice under the *Napue* standard. And we would just ask that the Court reconsider whether this standard was correctly stated ---

THE COURT: Sure.

MR. BROWN: --- and correctly applied. And again -- I just lost my place -- but again, 254 and 255.

THE COURT: Okay. Hold on. Let me get there.

MR. BROWN: Yes, ma'am.

THE COURT: I can even back you up. I apologize. At 253, you actually lay out the test from *Giglio*.

THE COURT: Right. Uh-huh. Uh-huh. Yes.

MR. BROWN: And if I may, in the first full paragraph under Heading "D," it says "*Giglio/Napue* Claim."

THE COURT: Yes.

MR. BROWN: And under part 2, you kind of give the prejudice standard that the falsity was material.

THE COURT: Reasonable likelihood. Yes.

MR. BROWN: That it affected the jury -- or judgement of the jury.

THE COURT: Right.

MR. BROWN: And I believe the correct standard is that it -- it would be could have affected the jury, not that it -- that it affected it. But so, again, we go back under this lesser than absolute standard.

THE COURT: Sure.

MR. BROWN: And we ask that the Court consider that.

THE COURT: Sure.

MR. BROWN: And I can just -- I can cite *Giglio* itself that -- if I use the U.S. Supreme Court -- U.S. Reporter, at 405 -- it starts at 150, but at page 154. And they quote *Napue*, and it says (as read): "A new trial is required ---"

THE COURT: I know you're going to read fast, because you're smart.

MR. BROWN: I'm sorry. I'm sorry.

THE COURT: And you can't help it. Because you can read so much faster than you can speak, and your mouth is trying to keep up with your -- with your brilliant head. So, you got to slow down.

MR. BROWN: That must be -- that must be the problem.

THE COURT: That is what it is.

MR. BROWN: But let me try to slow it down. And it just says (as read): "A new trial is required if, quote, the false testimony could in any reasonable likelihood affected the judgement of the jury, end quote, according to the *Napue* case."

And so, we ask that the Court consider whether the standard is more accurately reflected by the actual language *Giglio/Napue* and whether that lessening from --

whether there's a reasonable likelihood it affected the jury, rather there's a reasonable likelihood it could have affected the jury.

And I know some of this sounds like semantics, but I think ---

THE COURT: How could you -- yeah.

MR. BROWN: --- the profession of law is built on ---

THE COURT: Yeah.

MR. BROWN: --- words ---

THE COURT: Help me -- help me with this, because I don't understand how I could say there's a reasonable likelihood that it could have. Doesn't that call upon the Court to speculate? Don't I have to deal with rather than reasonable likelihood that it could, as opposed to reasonable likelihood that it did?

MR. BROWN: I think it does call on speculation, and -- and ---

THE COURT: Okay.

MR. BROWN: --- there's no question about it. If I can use maybe a math analogy. I think that the reasonably likelihood puts in a less than a 100 percent. I mean, you may be multiplying a point 5 times the whole number, so it reduces it in half. But I think then when you add ---

THE COURT: Point five something.

MR. BROWN: Point five ---

THE COURT: Point five something.

MR. BROWN: Well, let's say ---

THE COURT: Don't you think?

MR. BROWN: Let's say that -- that the absolute affect of the jury standard would be a 10.

THE COURT: Right.

MR. BROWN: And reasonably likelihood, maybe multiplying it by point five. So if we lower it from 10 to 5, but I believe the fact that it says "could," actually lessens it more ---

THE COURT: But it doesn't say that, though. It says "could" -- "it could with reasonable likelihood." There's both in there.

MR. BROWN: Could --

THE COURT: Could with reasonable likelihood ---

MR. BROWN: Yes, ma'am. And that -- and -- again, that "any" word is also not in there. I mean, it says "could in any reasonable likelihood.

THE COURT: Uh-huh. Yes.

MR. BROWN: Again, I'll be quite honest, that strikes me as a very low standard. I think the way the Court sets it up is that we have *Strickland*, *Brady*, and *Napue* and the prejudice prong is the highest hurdle on the *Strickland*, because it's just deficient performance like negligence. And I hate to use that, because ineffectiveness under

Strickland's not exactly malpractice.

But -- but for lack of a better way of characterizing, *Strickland*'s kind of the negligence standard. Then *Brady*'s more along the reckless standard, so it lowers the prejudice prong because there's more -- and I hate to say this -- may be some more culpability on the State of the due process violation.

And then, when we get to *Napue*, because that involves false testimony, which is like the biggest evil in court is to have false information filtered through a juror, that -- then the hurdles for prejudice is even lower.

And it gets real low here, we -- we believe, you know, we're not having to prove that absolute that it made an affect. And we don't believe we're even having to prove half way that it is more likely than not; it is could have reasonably like -- you know, reasonable likelihood that affected it.

And we're getting real down into what we have to prove. I mean, it's pretty low under our interpretation. And again, all we're asking today is the Court to consider what we have picked up on that aspect.

THE COURT: Oh, absolutely. And I did.

MR. BROWN: Yes, ma'am.

THE COURT: Let me tell you what I was going through -- and again, that's one of the reasons why the review --

MR. BROWN: Sure.

THE COURT: -- of this order, which was -- had -- you know, which painstakingly went through each -- each one of the -- each one of the grounds and the sub-grounds.

MR. BROWN: Yes, ma'am.

THE COURT: In addition, it took months for us to double check all the citations.

MR. BROWN: Sure. Sure. Yes, ma'am.

THE COURT: And -- and then, when we went through an -- you know, reexamined all of the evidence and reexamined the pieces of it, like this one.

MR. BROWN: Yes, ma'am.

THE COURT: And this has to do with the -- the wiring of the money and the involvement of -- of -- of the -- this is the Jamie Ferrell wiring of the money. And as I recall, that ---

MR. BROWN: Withdrawal of the money from the account.

THE COURT: Exactly. This -- this ---

MR. BROWN: It is -- in -- we believe the biggest issue related to all of these things is that the women were portrayed as victims in court, when in reality, they were at least co-participants.

And so, you know, at -- at one level it makes him -- and -- and some of this we've argued on different reasons it shouldn't have been in the guilt phase.

But you know, it's making Mr. Aleksey a perpetrator of crimes against other victims in the guilt phase.

And of course, in the penalty phase, I think Thomas Sims actually argued to the jury, don't -- don't execute him because he victimized these other women. In reality, they were victimized only in the sense that they got caught and punished, and Mr. Aleksey hasn't been held accountable yet, because in the custody of South Carolina. They're not victims of his hands by any means. I mean, they're victims of their own doing.

And so -- I mean, it's in -- and Solicitor Bailey actually mentions that, you know, that these other women are -- look at what he did to these other women. I mean, that's in part of his closing argument.

So, that's what we ask you to consider is that this testimony is not just *Brady*, but it's just flat false. I mean ---

THE COURT: The piece of it -- now, help. Let's go through the piece of it though.

MR. BROWN: Yes, ma'am.

THE COURT: The piece of it -- because the recurring theme is -- is -- if I may observe in general --

MR. BROWN: Yes, ma'am.

THE COURT: -- the recurring theme was -- was that there were these women who were susceptible, who for

whatever reason -- because this was an estranged husband or -- or -- or whatever other reasons.

And -- isn't -- isn't this one involving Jamie Ferrell -- is this the Marine down in Beaufort County? Or is this the wiring of the money?

MR. BROWN: This is the money in the bank at Absecon, New Jersey.

THE COURT: Right, right, right.

MR. BROWN: And we've got a photograph ---

THE COURT: Right.

MR. BROWN: --- of a teller where she's holding the pen.

THE COURT: Right.

MR. BROWN: Then we have document examination that indicates she actually was the one ---

THE COURT: Exactly.

MR. BROWN: --- that -- instead of what she says, which -- that the Court knows is false that she says that she -- was due to ---

THE COURT: Right.

MR. BROWN: --- and suffered -- and victimized by this.

THE COURT: Right. Right. Absolutely. You know ---

MR. BROWN: And this is only -- I didn't mean to cut you --

THE COURT: No, no.

MR. BROWN: --- this is only in the penalty phase, but we ask the Court to consider that in a death penalty case, that that's really when the magnifying glass comes on a review, because death is different. And this is something that's quantifiably different than a -- than suffering loss of liberty or suffering the stigma of conviction. But death is irreversible ---

THE COURT: As -- as so it should be. Absolutely.

MR. BROWN: And so, we ask that you consider --

THE COURT: Uh-huh.

MR. BROWN: -- again, it's a very low standard under *Napue*, and this -- the very grave stakes that are involved in a penalty phase.

THE COURT: And I have.

MR. BROWN: Yes, ma'am. Yes, ma'am.

THE COURT: I want you to know that I have, and I did. And again, that is why it took so -- so much time to go through it.

And -- and -- and let me refer to the testimony of Walter Bailey, where he says that his theory of the case was that -- that there were a number of women -- that there were a number of women who were susceptible to this kind of conduct; that he didn't -- that he didn't intend to make them out as people who had no involvement whatsoever, and

were -- they were totally victims or totally victimized.

But in -- just in terms of -- of who was susceptible and who was the moving force, Mr. Aleksey was the moving force, and had a remarkable ability to pick out these women and to repeat these patterns. And they were, you know, doing all this -- signing all these documents for all these cars repeatedly; going to the bank and signing documents. But the pattern seemed to repeat.

And again, that certainly was his theory, and -- and I believe that the record bears it out.

And there are some -- there are some differences and this is one of the differences. But even if this witness had testified to what you all -- again, with your remarkable ability, with your precision, I just -- I -- I couldn't -- I could not, in a fanciful way, find out how it could have made a difference. I mean, given -- you know, if I took that down to like 10 percent, the only way that I believe that your theory would work --

MR. BROWN: Yes, ma'am.

THE COURT: -- would be the requirement that in a capital case, it had to be a perfect case; that there could be no deviation whatsoever from a perfect case. And we -- we kind of getting there, but I don't believe we are there yet.

This is one -- while it is just as you have shown that

there was a difference in -- in the signator who went --

MR. BROWN: Yes, ma'am.

THE COURT: -- who did the wire transfer, just -- just as you all are able to show, I did not find that discrepancy --

MR. BROWN: Yes, ma'am.

THE COURT: -- to be of any moment to the theory of the State at all. I mean, I could not come up with a -- I couldn't come up with a way to make that matter.

In other words, who cares whether she was there or she wasn't there? These women were signing documents, they were going to the different car dealers. And you know, I really had to look at the fact that this witness wasn't candid about whether or not she actually went and did the wiring of ---

MR. BROWN: Yes, ma'am.

THE COURT: --- that did the transaction, in -- in the same light as the women who went to the dealership, you know, just a part of it.

You know, would it have made a difference? I just think it would have made it perhaps even more on force with the other women.

Obviously, this one wanted to be -- to paint herself as being more of a victim, even if the testimony had been clearer and she had -- she had testified ---

MR. BROWN: Yes, ma'am.

THE COURT: --- as you all showed, signed the document, and went and did the wiring, it would have been more consistent with the theory of the State and with these other women and -- and their conduct, not less so.

So, you know, obviously this particular woman wanted to paint herself as -- as not having as much of a participation in the scam, but I didn't see that made any difference to the State.

Mr. -- Mr. Zelenka, anything you need to add?

MR. ZELENKA: No, Your Honor.

THE COURT: Okay. I mean, so I -- I could take it down to point one percent, I just couldn't see it make a difference.

MR. BROWN: And I'm going to turn it over to Mr. Tarr.

THE COURT: Sure.

MR. BROWN: But there are a couple of things which I think are going to dovetail there --

THE COURT: Okay. Sure.

MR. BROWN: -- that I ask the Court to consider. And I mentioned one of them is that -- and this is the trial transcript. And it's at 2109 through 2110.

THE COURT: Oh. I did not bring that. I'm sorry.

MR. BROWN: Yes, ma'am. I've got a quote, but -- and he says, and this is a quote --

THE COURT: All right. All right.

MR. BROWN: -- this is Mr. Bailey.

THE COURT: With your -- all right. With your brain, slow down.

MR. BROWN: Yes, ma'am. (As read) "He used them, abused them, took them for all he could take, and let them" -- and then I cut out a little bit -- "a parasite on women" -- and a -- a little gap there -- "and he has lived off of women he has taken in; he has bled them dry."

And -- and I point that out, because that's the way he presents it, which we believe is that these women are purely victims. And nobody signs something saying we're going to get you $1,000 out, not thinking there's $10,000 in there. I mean, if I had to defend Ms. Ferrell in defense of a criminal charge, that wouldn't be a valid defense that, you know, I was naive about whether there was an extra $10,000 in my bank account.

I mean, I -- I've had clients who've asserted similar things. You know, the guy told me if I cashed his check, that he'd give me half the money. I mean, I think I have one of those right now, but a Sam's Club, but -- in Beaufort.

But I -- I say that, because it's just not -- I mean, it's just far-fetched to think that that's -- you know, money comes from nowhere.

And that, I think, has to be read in conjunction with two other things: One, we've made a claim that the door should not have been opened by -- and this doesn't apply to Jamie Ferrell or Lisa Watson -- that the door in the guilt phase shouldn't have been opened by Mr. Stone's ---

THE COURT: Yeah.

MR. BROWN: -- to let in all of these other crimes that I don't think would have fit under *Lyles*. Because they don't really show -- I mean, if anything he's going to argue maybe there's some motive to -- to -- for the crime of murder. But he goes into very deep detail about these other crimes.

And then in the -- the third thing I think goes in with that is that, again as I mentioned, Mr. Sims argues that -- in the penalty phase, don't kill him because of what happened to these other women. And he's actually cut off by the judge who instructs Mr. Sims that that's not what they're trying to do.

And it kind of stops at that. And it's not -- it's not really saying you can't argue anything along those lines. But then Mr. Sims stops.

And -- and frankly, we found that that was a very good argument by Mr. Sims. You know, don't kill him because of these crimes involving other women.

And I say that because some of it shouldn't have come

in. The *Brady* issue -- some of it we believe shouldn't have come in in the guilt phase.

And then, too, the Solicitor's actually arguing, we believe, just a one-track argument that they're victims and not co-participants. Which goes along with this undisclosed evidence or the perjurious testimony and -- or -- or the false testimony.

And then, at the end, Mr. Sims is kind of cut off, or at least stops ---

THE COURT: Uh-huh.

MR. BROWN: --- in his argument. And we believe that Mr. Aleksey then suffers from -- on a grander scheme, all three of this -- sort of the "perfect storm."

And the information that shouldn't come in comes in; solicitor argues it in a manner that we don't believe is totally accurate. Maybe accurate in what was presented at trial, but not accurate in the sense that there was some undisclosed information that would slightly change that argument. Solicitor Baily says that, that I want to couch my argument in a different term and -- and things like that.

And then at the end, when Mr. Sims is cut off in what we think is actually an effective argument, all three of those things only inure to his detriment, Mr. Aleksey's detriment. And again, it's three of them, and they're all

kind of dovetailed with this undisclosed or false information.

THE COURT: Uh-huh.

MR. BROWN: And -- and I'm going to turn over to Mr. Tarr. But that's all I had on those two issues regarding those standards, Your Honor.

THE COURT: Gotcha. Gotcha.

MR. BROWN: Thank you.

THE COURT: Thank you. Yes, sir.

MR. TARR: Thank you, Your Honor. This last argument is so closely related to another issue that I wanted to bring to the Court's attention, that's why I was kind of clamoring to stand up.

Your Honor, one thing we strenuously object to is this order just accepts what Mr. Bailey's testimony was at the PCR hearing, that he never sought to portray these women as anything other than co-conspirators.

Your Honor, we've been through this trial record over and over and over. There is not one place in the record where they're shown as co-conspirators. Not one.

I mean, he -- this is harsh, harsh language that he uses. I mean, he -- he's calling him a parasite on women: (as read) "He used them, abused them, took them for all they were --" that's not telling the jury that our theory is that these women knowingly went into this and were just

as guilty. That's saying that he -- they were absolute victims, 100 percent.

And I challenge the State for anybody to find anywhere in the record where the State's theory was that these women were co-conspirators.

Because -- not only that, but the defense didn't even bring up on cross-examination of Sarah Prevera that she was convicted of lying at the Lexus car dealership and falsifying documents.

So, the State didn't present that evidence; the defense didn't bring it up. And so, the jury's left with this -- oh, this guy just -- totally just used this girl to get a Lexus.

THE COURT: Well, wasn't -- let me ask you this question: Wasn't it the theory of the defense -- one of their theories -- that, you know, you -- you -- the character of Mr. Aleksey is a fellow -- he's a little bit like a panhandler, if you will.

I mean, he'll find a vulnerable woman who, you know, finds him attractive. And you know, they'll have a good time and -- and he'll get a car or he'll get some money. And that's his deal. That's been his deal for forever.

But that's what you're dealing with. That's his history; that's his character. That's who this man is. This man's not a murderer. This man doesn't go pick -- you

know, this man, what he does is he finds a woman -- but what he was looking for was this woman, Ms. Prevera, to go to Florida. He really was looking for the trip to Florida in the car.

That's what he does. I mean, he has the ability to pick out -- in -- in a fairly remarkable way, to find these women and get them to -- to do things for him, like get him a car and take him to Florida.

That didn't -- wasn't it their theory that that's what he does? He doesn't kill people. We don't know who this woman Prevera is. Now, she's the one with the problems. But this guy, that -- that isn't what he does, ladies and gentlemen.

Wasn't that -- didn't they say that ---

MR. TARR: That was ---

THE COURT: --- was their theory?

MR. TARR: That was the defense theory, Your Honor.

THE COURT: Okay.

MR. TARR: I totally agree.

THE COURT: Okay.

MR. TARR: My -- my argument is Walter Bailey's testifying at PCR that that was the State's theory, and that's what he -- that's how he presented it.

There's not one place in the record -- in -- in the entire record where he ever treats them as anything other

than victims. And yet he's going to get on the stand and say, "Oh, I never treated them as anything other than co-conspirators."

And then the order adopts that as being truth, when there's no support whatsoever in the trial record. That's my issue. And it's going up -- this case is going up to -- to higher courts, and they're going to just look at this and say, "Oh."

And I mean, I -- there's just nothing in -- I mean, you can't cite anywhere in the record where he treated them as anything other than out-and-out victims --

THE COURT: Okay.

MR. TARR: -- of a parasite.

THE COURT: Okay.

MR. TARR: That's what he called them.

THE COURT: Okay.

MR. TARR: So, that -- that -- that's the issue that I have, Your Honor.

THE COURT: I do understand. Let me hear from Mr. Zelenka.

MR. TARR: Okay.

MR. ZELENKA: Well, let me point out one area in the record where he treats them as willing participants: Jamie Ferrell, 1900, (as read):

"Did you know he was withdrawing it?"

"Yes."

"As a result of it, what happened?"

"I got arrested by the State of New Jersey."

That's page 1900.

1902 (as read): "How much money did that relationship cost you as far as having to pay back the money out of your account?"

"With the money out of the account, I have to pay back 10,000 for it."

"So, it cost you 10,000, and you are paying it back."

"Yes."

"Did your relationship cost you any additional money?"

"One time he was driving my car, there was something wrong with it. Turned out the transmission blew. He told me to get it ---"

THE COURT: Hold on, hold on, hold on. You got the same brilliant mind, and our court reporter gotta take it all down.

MR. ZELENKA: (As read)" ... $2000 worth of work."

That's all Walter Bailey's questions. He is -- and -- and you know, we're -- we're flipping back to -- to -- they're blending *Brady* issues, which is "duty of the prosecutor to disclose information he knows or should have known," with *Giglio* issues, "knowing use of false testimony."

And I think, Your Honor, in -- in your order, you didn't -- you -- you separated those issues, and separated them appropriately.

Walter Bailey didn't knowingly use false testimony in this case. The like -- there's no reasonable likelihood that the result would have been different or could have been different, to use their double-expanded term of "reasonable likelihood."

And -- and courts don't always put the "could" in there, with -- with all due respect. There is some Supreme Court opinions that have it; there are others that don't.

But -- but using the "could," that's fine.

THE COURT: Uh-huh.

MR. ZELENKA: Because I think that test that you utilize is the same. But underlying your *Giglio* approach was the solicitor didn't knowingly use false testimony.

Now, ever since *State vs. Caldwell*, the State's allowed to argue reasonable inferences from the record in its theory of the case.

They disagree with the State's theory of the case. I -- I recognize that, understand that. It's their obligation as zealous advocates on the part of their -- their client to do that. But that doesn't mean that they've satisfied their burden that the State's theory is false in these settings.

He had a reasonable basis to rely upon that theory. There's evidence in the record that supports that theory. He wasn't trying to prevent evidence of a contrary theory from being introduced. In fact, it appears to me with Ms. Ferrell, Ms. Beth Calina, he -- he wasn't, shall I say, waiting for the defense to bring out some of these matters which may impact negatively on it.

He always had Mr. Aleksey and whichever woman that was involved in this case, recognizing that when the relationship was starting, they were getting benefit. No doubt about it. And then the benefits dried up and he moved on.

That's what happened. That was Walter's theory and argument in the case to show the defendant's character, to show, essentially, a basis in the guilt phase that he had all these things hanging over his head at the time of the stop.

That goes to motive; that goes to Lyles; that goes to the admissibility in the State's theory of the case. That was the State's theory. Nothing more, nothing less.

THE COURT: And if it had worked, it would have been brilliant, because the defense's theory was to take the same information, once it was put -- and they must have been convinced it was going to come in also.

And to take that same information and to use it to the

benefit of the defendant at that point -- applicant -- here. And say, "Right. This is not that kind of guy. This is a different kind of person."

MR. ZELENKA: Right.

THE COURT: This is not the kind of person that does these things.

MR. ZELENKA: Right. Sword and shield. If -- and it was going to come in inevitably. I mean, it's not -- if -- if it wouldn't have in the guilt, it was ---

THE COURT: It's coming in the penalty.

MR. ZELENKA: --- going to come in the penalty --

THE COURT: I agree.

MR. ZELENKA: -- under *Shaw* and the others.

I -- I would note that within my original memorandum, and within portions of this Court's order, there were some misinterpretations by me. But I think I -- I led onto the Court in a -- in a couple of areas where I was summarizing some of the testimony which -- which came out.

If I can refer you to directly the memorandum -- the motion before the Court, page 14, where they're noting at page 142 of the order, where it's discussing the purchase of the motorcycle and the Lexus. I reflected, within my original memorandum, that it was directed towards the wrong woman.

Reviewing that information, their objection was

correct. The Lexus purchase involved Sarah Prevera; the motorcycle was purchased by Teresa McCain. That -- that is a correct statement.

It is my -- my blended interpretation of my notes that -- that probably led the Court on a wrong way there. And that's reflected in PCR transcripts page 1185 and 1186.

And again, on that same page, the order incorrectly discusses Bayan Aleksey holding a gun to Elena Batcolina [phonetic]. That was questions which actually went to Gloryvee Perez.

And that is reflected -- they -- they summarize it differently. But at page 1183 was what I meant to be stating, and -- and actually, at -- at page 142, I think it may have gotten cut up when I was preparing some of my materials.

But that -- that is incorrectly interpreted in that also, those -- those two portions. And that was -- that was my mistake, Your Honor.

THE COURT: Well, I'm surprised I missed it, because we double checked the -- and you're saying we did not pick that up. Because we double checked when we went through the -- the transcript, so we did not pick that up?

MR. ZELENKA: No. And I didn't ---

THE COURT: Okay.

MR. ZELENKA: --- a number of times ---

THE COURT: I'm surprised.

MR. ZELENKA: --- until again last night. So, I was --

THE COURT: Yeah. Okay. Well, good ---

MR. ZELENKA: --- I was misreading it ---

THE COURT: --- good for them for ---

MR. ZELENKA: --- misreading my notes.

THE COURT: --- for clarifying that, because we went through all of the -- you know, all of the -- caught a -- you know, caught a number of things. So, we must have just missed that. So, good for you guys. I mean, the -- the events are accurate; the names would be inaccurate.

Okay. So, you make a note to get -- because those must be corrected.

MR. ZELENKA: Yes.

THE COURT: Okay. Great. All right.

MR. TARR: I would just -- the testimony he just read, from Jamie Ferrell, clearly supports what I was saying. She didn't say anything about being involved. She just talked about all the ways it cost her ---

THE COURT: Uh-huh.

MR. TARR: --- in the -- she lost $12,000 and got on probation. She didn't say that she did anything with Mr. Aleksey. She said she was victimized.

THE COURT: Well, he asked her did you -- were you

aware that he was withdrawing the money.

MR. TARR: But she also states that -- and he didn't read that part.

THE COURT: Uh-huh.

MR. TARR: That he told her that the money was being wired into her account. So, she didn't think there was anything wrong, based on her testimony.

So, these -- it was completely presented to the jury as if she was victimized out of $12,000, and got put on probation on top of all that.

So, that just clearly supports what I'm saying. There's nowhere in the record where any of the women were treated as anything other than victims. So, I think that's about all I had on that issue, Your Honor.

THE COURT: All right.

MR. TARR: There are two other small areas I wanted to touch on.

THE COURT: Yes.

MR. TARR: One of them is with regard to -- it's our opinion that the order minimizes the importance of kind of all the problems associated with Gloryvee Perez's, you know, cross-examination, *Brady* issues of information that was not turned over by the State.

This is an area where motive was the number one factor in Walter Bailey's closing argument of why Bayan is guilty.

You know, we all know there were two people in that car who could have shot Trooper Lingard: Ms. Gloryvee or Bayan.

So, it's -- if you've got the only thing the 12 people are hearing are -- are that Bayan was the only one in the car that had any reason to run from anybody or any reason to avoid apprehension, then it makes it a lot less likely that -- that a passenger who's not wanted, who doesn't have warrants out, who -- who hasn't been involved in criminal activity, why would they shoot the trooper?

And so, our position is that she had a bench warrant out for her; she was involved in a month-long conspiracy, doing numerous criminal acts along with him in the north east; and that Walter Bailey admitted on the stand at PCR hearing that he would not have been able to make those arguments.

And that was his number one reason -- telling the jury he had eight reasons why Bayan was guilty, and only Bayan could have done this. And that was the number one, and he emphasized that over and over and over.

And we just believe that -- that the order minimizes how important that argument for the State was to the State, and how important it would have been to the jury.

And so, that all of these other things that either didn't come in or just, you know, not -- that were not turned over to the defense or they didn't ask about, just

kind of allowed the State to present this picture that was just not accurate. And we just believe that the order minimizes that.

THE COURT: Tell me what else.

MR. TARR: Well, that's -- that's basically ---

THE COURT: Okay.

MR. TARR: As far as that issue -- I mean, I was kind of waiting on Mr. Zelenka ---

THE COURT: You know, I just -- Mr. Zelenka, I --

MR. ZELENKA: I -- I -- for the purposes of Rule 59, I have nothing else to say.

MR. TARR: And I -- that's -- I could have not even mentioned it and allowed that our Rule 59 to stand on it's on. But it's so important to me in terms of significance of all of the issues, that I just wanted to bring it up.

THE COURT: Sure. Sure. Got it.

MR. TARR: There's one other matter that I wanted to mention, and I think Mr. Brown might have one last thing.

THE COURT: Okay.

MR. TARR: The one -- and this was brought up to me by Mr. Aleksey. He wanted me to bring this out.

THE COURT: Okay.

MR. TARR: I think it's important.

THE COURT: All right.

MR. TARR: A couple of places in the order, page 38

and page 79, dealing with the failure of the defense to bring up the issue of brutality by the police officers during their interrogation of Mr. Aleksey.

Just wanted to point out that there is an article that's in evidence in Applicant's 72. I believe it's a group of numerous newspaper articles, but it's the one dated January 6, 1998. It's an article in the -- article in the Orangeburg "Times and Democrat."

It -- it references in there -- and the reporter says, that there is a -- that he confessed to killing the state trooper after being beaten and threatened by the police. And that reporter is citing WIS TV interview that was done in a -- I guess, the tape copy that they had that they did this article from.

And Mr. Stone had basically said they didn't use the brutality issue, because the WIS interview didn't reference any beating claims from Mr. Aleksey.

And I just wanted to point out to you there was a newspaper article that says that WIS TV did -- the interview with Mr. Aleksey did have claims of brutality.

THE COURT: Did you all have where WIS -- I -- I remember what you are speaking of. But I don't remember the WIS tape --

MR. TARR: All we saw was a transcript.

THE COURT: Okay.

MR. TARR: And so, the transcript -- I'll hand up to the Court. The transcript did not indicate anything like that.

THE COURT: Right.

MR. TARR: But this article makes mention of a tape recording that we never heard.

THE COURT: Yes.

MR. TARR: So, I -- it's in the article. It's just something -- it's a reason that I think, as an attorney, and your client's telling you on -- there's another portion. Counsel Stone's notes from March 23, 1998, Applicant's 2, says that he would -- he confessed after he was beaten or that he was -- the exact -- the exact words were "they beat the shit out of me." That's what Mr. Aleksey was supposed to have told Mr. Stone.

So, you've got that coupled with this article saying he told WIS at the time. And that -- that's just -- you know, we have raised the issue that -- that this is the client who has a two-hour gap in the tape. And who comes back on the tape after saying he didn't do it. He's crying and said ---

THE COURT: Right.

MR. TARR: --- that he did do it. And basically the order kind of makes it seem like there was no reason to think that -- that there was any brutality, because there

was nothing in the -- the then recent call to WIS saying anything about it.

And that Mr. Stone had -- you know, no idea that this might have happened. But he had his own notes where he told them that and this article. So ---

THE COURT: Uh-huh.

MR. TARR: --- I wanted to point that out.

THE COURT: Yes. All right, Mr. Zelenka.

MR. ZELENKA: Well, that's a direct reference to his testimony at page 1137 (as read): "You told me before the police officers and you told me at least" ---

THE COURT: Hold on.

MR. ZELENKA: --- "at one point in time, that the police coerced his confession. That was part -- that was an obvious defense we were going to have to put forward any way. The problem with that was it wasn't backed up by the tape, WIS television."

That's the way Duffy testified at the time of the trial. That's where that reference to that summary at page 35, within the order, within our earlier memorandum.

THE COURT: Okay.

MR. TARR: Your Honor, that's all I have with regard to that issue -- with regard to issues that I wanted to bring up.

THE COURT: Very well.

MR. TARR: Mr. Brown, I think, had one other ---

THE COURT: Thank you, Mr. Tarr. Yes, sir.

MR. BROWN: May it please the Court. This deals with -- and Your Honor touches on some of the case law. But we ask that you look back at the issue regarding James Aiken and the adaptability testimony. And I'm going to be very specific.

There wasn't adaptability testimony presented by an expert such as James Aiken, we -- we allege that that was ineffective. We presented Mr. Aiken in his testimony.

In response, the State developed evidence from Solicitor Bailey that, among other things, he had this very effective cross-examination of Mr. Aiken that involved questions about privileges. And of course, the testimony of Solicitor Bailey was taken in July of 2003.

And since that time ---

THE COURT: We've had the *Bowman* case. And we've had ---

MR. BROWN: --- Yes, ma'am. And the *Burkhart* case.

And they're both cited in there, but I -- I point that out, because in your opinion -- in the order, excuse me, Your Honor, if I may. When you go through the bottom of page 121, you do a prejudice analysis under *Strickland* as an alternative, not finding that there was deficient performance, but assuming if there was such a finding, that

there wasn't a prejudice finding. And you put (as read): "Prejudice has not been shown." And that sentence continues.

And then the next sentence in the paragraph, it goes into (as read): "At the hearing, Solicitor Bailey testified he'd been involved in prior cases where James Aiken testified. Solicitor Bailey stated that he liked to cross-examine experts like Mr. Aiken from the prosecution point of view, and present testimony about what a defendant is adapting to and develop a description of prison life in general prison population."

And so, the way I see it, those are supporting sentences for the initial thesis of that paragraph or -- or leading sentence which is that there's no prejudice. And you support it because Solicitor Bailey has this cross-examination he likes to go into.

And of course, at the time, that's true in the factual sense. But we know now that *Bowman* criticized that, and *Burkhart*'s more of less prohibited this general prison conditions.

THE COURT: On the basis of an earlier case that was before *Aleksey*. It was an earlier case and I don't remember the name of the case, but it is in the *Bowman* case.

And what the Court talks about is that -- that while

they got away from talking about the adaptability issue on the basis of an earlier decision -- and again, it's in the *Bowman* case.

MR. BROWN: I think it's *Bryant*.

THE COURT: Is that what it is?

MR. BROWN: There's a ---

THE COURT: Yeah. *Bowman* -- that -- that the cases and the capital cases had sort of moved back towards that. And -- and the *Bowman* case, of course, Mr. -- Mr. Aiken testified.

And then the Court does talk about some of his testimony was -- was entered to -- to, what? -- to neutralize --

MR. BROWN: Yes, ma'am.

THE COURT: -- some of what the State had -- had asked. And it -- and it ended up being really more of the testimony than the Court was probably happy about. But the *Bowman* case was able to sort of not get reversed as happened in the *Burkhart* case.

MR. BROWN: And if I may, Your Honor.

THE COURT: Yes.

MR. BROWN: On that, I represent Mr. Bowman ---

THE COURT: I know you do. I know you do.

MR. BROWN: --- on PCR, which is still pending in circuit ruling. And they found it was unpreserved in

Bowman for direct appeal. We've actually raised and had that issue ending right now, on whether it was ineffective for them to not prevent that testimony.

And so -- and -- and again, Your Honor ---

THE COURT: I'm with you.

MR. BROWN: --- I just point this out, because even though you do cite *Burkhart* in a footnote, the preceding pages in this section were saying that it's not prejudice, you then go back to support it with Solicitor Bailey's -- and I used the phrase "canned cross-examination," because it's kind of a generic cross.

THE COURT: Yeah. But that wasn't the reason. That was just an element. That certainly wasn't the reason. And I think, in the order, part of it probably because I'd seen it.

MR. BROWN: Sure. Yes, ma'am.

THE COURT: But -- but that is not -- that certainly isn't the primary reason at all. The primary reason -- and I think it's expressed in the order. The primary reason was -- was the case law, the earlier case law --

MR. BROWN: Yes, ma'am.

THE COURT: -- and then as the Court -- you know, we could have been -- we could have been *Burkhart*.

MR. BROWN: Yes, ma'am.

THE COURT: If -- if -- and I'm not -- and -- and the

argument, I think, is that perhaps counsel was more aware of it in this case and the earlier prohibitions about that.

MR. BROWN: Yes, ma'am. And I just wanted to point that out.

THE COURT: Sure. Absolutely.

MR. BROWN: Yes, ma'am.

THE COURT: Absolutely. All right. Anything further from you, Mr. Zelenka?

MR. ZELENKA: No. I -- you know, again, it's clearly a retrospective analysis. I mean, the way James Aiken testified in the post-conviction relief hearing on direct would not have been admissible under *Burkhart*, a significant portion.

A lot of the "canned" Walter Bailey, if they want to use "canned," cross-examination was going to those elements of his testimony --

THE COURT: Right.

MR. ZELENKA: -- that the Court, *Burkhart*, *Bowman*, and others were trying to direct the Bench and both members of the Bar not to go into.

THE COURT: Exactly.

MR. ZELENKA: So, you know, it's --

THE COURT: But -- and -- and that had been the case. And -- and in the *Bowman* case, they talk about the fact that that had been the law. But *Bowman* didn't recreate it;

it didn't change the law. It re-stated earlier law.

So, the -- and that arises in the Bowman case, just as Mr. Brown is talking about. But -- and so, we're really talking, in the PCR in this case, about things that wouldn't have been there.

MR. BROWN: And we would concede that what we more of less proffered as testimony from Mr. Aiken -- it could have been presented at trial, would not have been as broad as what we proffered.

THE COURT: Sure.

MR. BROWN: We concede that it narrows for both the defense and the State --

THE COURT: Sure.

MR. BROWN: -- and we also agree with the Court that it's almost like this has always been the law, but both sides allowed each other to kind of get out of hand on it.

THE COURT: Sure.

MR. BROWN: So ...

THE COURT: Sure. Okay. Although I express no opinion about the other case that I know you're involved --

MR. BROWN: I know Your Honor.

THE COURT: I'm done. Did my thing; I'm done.

MR. BROWN: You weren't the trial judge in -- in Mr. Bowman's case.

THE COURT: Yeah. All right. Thank you, gentleman,

so much. And I am going to ask -- I do agree with you that the -- that the matter involving Judge Williams's affidavit needs to be included in the matter.

I will continue, of course, my consideration. But I am going to ask that Mr. -- Mr. Zelenka get for me a proposed order. But I certainly am going to consider the matters raised here today.

And thank you everyone.

MR. TARR: Thank you.

MR. BROWN: Thank you.

THE COURT: And you all have got that -- I know you want --

MR. ZELENKA: Judge, before we get off the record --

THE COURT: Yes.

MR. ZELENKA: -- I want to apologize for the Department of Corrections and Mr. Aleksey. I apparently dropped the ball on getting appropriate information to them to have him transferred him on time. We got that worked out this morning.

But that -- that's -- that's on me, Judge.

THE COURT: And very well. So, I see these kind and familiar faces. They are so wonderful and so helpful. I am sure that they understand. They -- they are just -- they are a delight to have in court and around the courthouse. They are super. Yep. And I have the pleasure

of seeing them often.

-- END OF TRANSCRIPT OF RECORD --

CERTIFICATE

I, THE UNDERSIGNED BONNIE H. KELLY, OFFICIAL COURT REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR DORCHESTER COUNTY, SOUTH CAROLINA, ON THE 4TH DAY OF MAY, 2010.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

_____

BONNIE H. KELLY,

COURT REPORTER

COLUMBIA, SOUTH CAROLINA

NOVEMBER 21, 2010

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	)	CA No. 00-CP-38-628
	)	
BAYAN ALEKSEY, #5059	)	
Applicant,	)	**SUPPLEMENT TO MOTION TO**
	)	**CLARIFY THE STATE'S POSITION**
v.	)	**REGARDING A PROSECUTOR'S**
	)	**ELIGIBILITY FOR APPOINTMENT**
STATE OF SOUTH CAROLINA	)	**IN LIGHT OF CONFLICTS OF**
Respondent.	)	**INTEREST**

FILED IN THE RECORD
CLERK OF COURT
ORANGEBURG, SC
DEC 19 P 12:58

THIS SUPPLEMENT TO A MOTION IS BROUGHT BEFORE THIS COURT, on behalf of Applicant by his attorneys, to further illustrate the need for the Court to clarify certain testimony regarding the appointment of trial counsel Stone to represent Mr. Aleksey's interest in the defense of the allegations of capital murder. This supplemental information has just been provided to PCR counsel for Mr. Aleksey and provides further demonstration of the need to supplement the record with correct testimony regarding the nature of trial counsel's appointment to Mr. Aleksey's defense in 1998.

As the Court will recall, trial counsel Stone was called to testify at the PCR merits hearing in the above captioned matter. In testimony provided to this Court, in the State's Post-Hearing Memorandum in Opposition to Application for Post-Conviction Relief, and in the State's proposed Order Denying Post-Conviction Relief, reference was made to trial counsel Stone's obligation to "place himself on the appointment list for cases and a requirement that he put his name on the list for conflicts outside of his circuit." State's Post-Hearing Memorandum, page 35, referencing PCR transcript page 985. Trial counsel Stone also testified regarding his appointment in this death penalty matter that "....what I did on that was simply look at the court *rules* which told me as far as being appointed, put myself on the appointment list and there was

A TRUE COPY
CLERK OF CO
ORANGEBURG COUNTY.

clearly the prohibition from me taking cases inside the Fourteenth Circuit and a requirement on the other end of that to put my name on the list for conflicts outside of the circuit in which I practiced." PCR, page 985, lines 1-8. Later, Stone stated: "[m]y experience was probably more with the court *rules* that I think, and I still think, require me actually to put myself on conflict lists outside of the places in which I have a conflict. And I may be reading that *rule* wrong, but that is at least my impression of it and when I studied that particular issue, that's the way I understood it." PCR, 1130, l. 19-25. (emphasis added).

However, it is now conceded that South Carolina Appellate Court Rule 608 was not enacted until March 4, 1999 (more than six months after Aleksey's trial). Further, this rule did not apply until July 1, 2000. In fact, only the death penalty statute itself, SC Code Section 16-3-26 (1997 version), applied to the appointment of counsel in death penalty proceedings during the year 1998. This statute actually provided a mechanism for counsel to remove themselves from appointment in a death penalty matter.

Now it appears that counsel Stone was never on any appointment list in Orangeburg County. In fact, he did not receive this appointment related to any "list", but instead received this appointment directly from a circuit judge upon recommendation by the then Chief Deputy of the Office of the Solicitor of the First Judicial Circuit. Thus, the very same office which prosecuted Mr. Aleksey is the office which chose his trial counsel.

There is little doubt as to the veracity of the information concerning this appointment of counsel Stone as this stems from an affidavit of former Chief Administrative Judge of the First Judicial Circuit and current Circuit Court Judge, Judge James C. Williams. See attached Affidavit of James C. Williams. As noted in the affidavit, Judge Williams was the then Chief Deputy for the Office of the Solicitor, the very same office prosecuting Mr. Aleksey.

Instead of Stone being conscripted into the representation of Mr. Aleksey, it appears that Stone's representation of Aleksey was more akin to that of a volunteer. This new information changes the complexion of the conflict issues. Testimony concerning the appointment should be required to clarify the record for purposes of judgement at the trial level and on appeal.

Therefore, counsel request that the court convene a hearing to provide accurate and truthful testimony regarding the appointment of counsel Stone.

Respectfully submitted,

DAVID TARR
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(803) 238-7967

JAMES A. BROWN, JR.
Law Offices of Jim Brown, P.A.
1111 Bay St., P.O. Box 592
Beaufort, SC 29901-0592
(843) 470-0003

BY: _____
ATTORNEY FOR APPLICANT

May 19, 2009.

CERTIFICATE OF MAILING

I hereby certify that a copy of the foregoing pleading was mailed to all counsel of record in this proceeding this 19th day of May, 2009.

_____

5315

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	CASE NO. 01-CP-38-628
COUNTY OF ORANGEBURG.)	
BAYAN ALEKSEY,#5059)	
)	
Petitioner)	
)	AFFIDAVIT OF
v.)	JAMES C. WILLIAMS, JR.
)	
STATE OF SOUTH CAROLINA.)	
)	
Defendant.)	
)	

FILED FOR RECORD
WINNIFA B. CLARK
CLERK OF COURT
ORANGEBURG, SC
2009 MAY 19 P 1:00

I, James C. Williams, Jr., being duly sworn, do state:

1. I am currently a Circuit Court Judge of the First Judicial Circuit in South Carolina.

2. During February of 1998, I was Chief Deputy Solicitor of the First Judicial Circuit.

3. Some time prior to the appointment of Duffie Stone in February of 1998 to represent Bayan Aleksey in his capital trial in Orangeburg, I suggested to the Honorable Luke Brown that Mr. Stone would be a good choice to appoint as counsel for Mr. Aleksey.

4. At that time, Mr. Stone had just moved his law office from Columbia to Beaufort and was in need of cases to build his practice and he was statutorily qualified to accept such an appointment.

5. Mr. Stone was contacted and agreed to accept the case.

6. In Orangeburg, at that time, prior to the enactment of Rule 608, appointments were generally made from a list of local attorneys and those who advertised in the Orangeburg phone book and this list was kept in the Clerk's Office.

7. I am not aware whether Mr. Stone was on this list or not, nonetheless he was not appointed in that manner. Judge Brown, Mr. Thomas Sims and I were discussing who else to appoint and Mr. Stone was mentioned, contacted and agreed to accept according to my best recollection.

May 19, 2009

James C. Williams, Jr.

ATTEST: TRUE COPY
Winnifa B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

SWORN to and subscribed before me
This 19th day of May, 2009.

Notary Public for South Carolina
My Commission Expires: 1/9/13

5317

STATE OF SOUTH CAROLINA COUNTY OF ORANGEBURG.	)	IN THE COURT OF COMMON PLEAS CASE NO. 01-CP-38-628
BAYAN ALEKSEY,#5059 Petitioner v. STATE OF SOUTH CAROLINA. Defendant.	)	AFFIDAVIT OF JAMES C. WILLIAMS, JR.

FILED FOR RECORD
WINNIFA B. CLARK
CLERK OF COURT
ORANGEBURG, SC
2009 MAY 19 P 1:00

I, James C. Williams, Jr., being duly sworn, do state:

1. I am currently a Circuit Court Judge of the First Judicial Circuit in South Carolina.

2. During February of 1998, I was Chief Deputy Solicitor of the First Judicial Circuit.

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May 19, 2009

James C. Williams, Jr.

ATTEST: TRUE COPY
Winnifa B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

SWORN to and subscribed before me
This 19th day of May, 2009.

Notary Public for South Carolina
My Commission Expires: 1/9/13

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	)	CA No. 00-CP-38-628

BAYAN ALEKSEY, #5059 *Applicant,*	)	**OBJECTION TO PROPOSED ORDER REGARDING APPLICANT'S MOTION TO ALTER AND AMEND JUDGMENT PURSUANT TO SCRCP RULE 59**
v.	)	
STATE OF SOUTH CAROLINA *Respondent.*	)	

THESE OBJECTIONS ARE BROUGHT BEFORE THIS COURT, on behalf of the Applicant, by undersigned counsel.

To begin, Mr. Aleksey objects to so much of the Order at issue as indicates that his argument makes "...a general incorrect assertion that an attorney is never obligated to accept appointment in a criminal or capital case." The objection is based upon SC Code Section 16-3-26 which specifically allows counsel to decline appointment of counsel in a capital case. SC Code Section 16-3-26 ("In the event the court appointed counsel notifies the chief administrative judge in writing that he or she does not wish to provide representation in a death penalty case the chief administrative judge shall advise the Office of Indigent Defense which shall forward a name or names to the chief administrative judge for consideration.") As no ambiguity exists regarding the meaning of this section, no South Carolina Court need conduct any statutory interpretation to divine its meaning.

Further, the Court's citation to Ex Parte Dibble, 310 SE2d 440(SC Ct. App. 1983) is misplaced. To begin, Dibble is neither a criminal case nor a capital case so it holds little value in a capital context as the one before the bar. The language quoted in Dibble is also dicta, as again,

the case involves court appointment in the civil context. Finally, the assertion made in the dicta contained in Dibble goes against the majority of jurisdictions to have actually rule on this very issue. See State v. Smith, 747 P.2d 816 (KS 1987)

Next, objection is made to the Rule 59 Order in so much as it states that Mr. Aleksey "...failed in his burden of proving that Stone actually represented Trooper Stack through specific assignment of the Insurance Reserve Fund in an attorney client relationship." In fact, Stone specifically indicated "That's right" in response to the query whether there was "...another trooper from Columbia that you represented." Stone continued in response to the question "Do you remember who that trooper was?" by answering "That was–yes, Trooper Lyn Stack. See PCR, p. 792, l. 11-13 and l.17-18. This questioning was in the context of extensive questioning about IRF cases, appearing, roughly, at pages 756-822 of the PCR testimony.

Also, objection is made to the Order where it references Walter Bailey's PCR conclusion regarding the characterization of his prosecutorial theory. First, Bailey's comments should be viewed with a skeptical eye to the fact that he is biased against any court ruling which might imply he committed any prosecutorial misconduct. Further, the record is very clear that he never argued to the jury that the women were co-participants in any of Aleksey's behavior prior to his arrest in South Carolina.

Finally, undersigned counsel desire to specifically reference Ground S of the Third Amended Application for Post-Conviction Relief. Reference and argument to this ground is made in the briefings filed by both counsel for Aleksey and for the State. The Court, on page 259 of the signed Order denying relief, indicates that "... that the application for post conviction relief (was) denied in its entirety." Therefore, undersigned counsel wish to underscore the fact that this ground was raised and ruled upon and has not been abandoned as the record speaks for itself

regarding the merits of this claim.

Therefore, the Court should consider such objections prior to signing the proposed Order regarding the Rule 59 Motion.

Respectfully submitted,

BY: _____

August 2, 2010
Beaufort, South Carolina

James A. Brown, Jr.
ATTORNEY FOR APPLICANT

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RECEIVED SEP 0 8 2010

STATE OF SOUTH CAROLINA	)	In the Court of Common Pleas
COUNTY OF ORANGEBURG	)	00-CP-38-628
Bayan Aleksey, #5059, Applicant, v. State of South Carolina, Respondent.	)	**ORDER ON APPLICANT'S MOTION TO ALTER AND AMEND JUDGMENT PURSUANT TO RULE 59**

FILED
2010 SEP -2 AM 11:42
CLERK OF COURT
ORANGEBURG, S.C.

This matter comes before this Court by the Applicant's Motion to Alter and Amend Judgment Pursuant to SCRCP Rule 59 dated February 26, 2010. On May 4, 2010, a hearing on the Motion was held in Dorchester County. The Applicant was present and represented by his court-appointed lawyers Jim Brown of Beaufort and David B. Tarr of Columbia. The Respondent was represented by Donald J. Zelenka of the Attorney General's Office. After argument, this Court took the matter under continuing advisement and requested a proposed order from the Respondent. This Court re-affirms the judgment denying post-conviction relief.

A. <u>The Affidavit of Judge James Williams</u>

The Applicant initially seeks the Court to alter its February 5, 2010 Order to include consideration of the May 19, 2009 affidavit of James C. Williams, Jr., submitted subsequent to the original hearings and briefing in this matter. Prior to the issuance of its February 2010 Order, this Court did review and consider the affidavit which relates to the appointment of Duffie Stone as counsel for Mr. Aleksey. The affidavit states the following in its pertinent part:

ATTEST: TRUE COPY
CLERK OF COURT
ORANGEBURG COUNTY, SC

"2. During February of 1998, I was Chief Deputy Solicitor of the First Judicial Circuit.

3. Some time prior to the appointment of Duffie Stone in February of 1998 to represent Bayan Aleksey in his capital trial in Orangeburg, I suggested to the Honorable Luke Brown that Mr. Stone would be a good choice to appoint as counsel for Mr. Aleksey.

4. At that time, Mr. Stone had just moved his law office from Columbia to Beaufort and was in need of cases to build his practice and he was statutorily qualified to accept such an appointment.

5. Mr. Stone was contacted and agreed to accept the case.

6. In Orangeburg, at that time, prior to the enactment of Rule 608, appointments were generally made from a list of local attorneys and those who advertised in the Orangeburg phone book and this list was kept in the Clerk's Office.

7. I am not aware whether Mr. Stone was on this list or not, nonetheless he was not appointed in that manner. Judge Brown, Mr. Thomas Sims and I were discussing who else to appoint and Mr. Stone was mentioned, contacted and agreed to accept according to my best recollection."

Affidavit, James C. Williams, Jr., May 19, 2009. The Applicant contends that this affidavit supports its collateral argument that counsel Stone was not selected from a list and was not obligated to accept the appointment under Court rules.

In the Court's original Order, the issue concerning Mr. Stone's appointment and responsibility to serve was addressed at pages 27-74. The Applicant is correct that the Court did not expressly include a discussion of Judge Williams' affidavit, but I did consider the affidavit prior to the decision. However, the affidavit does not have the probative effect that Applicant now claims.

Judge Williams (then a Deputy Solicitor) avers that during a discussion with Judge Luke Brown and appointed defense counsel Sims, he mentioned to Judge Brown the possibility of appointing Duffie Stone who was statutorily qualified for appointment. Although it was not know by him whether Stone was on a list at the Orangeburg Clerk's Office by Williams, he avers that Stone was then contacted and agreed to serve.

Counsel Stone's testimony at the hearing was that he was contacted by Judge Hughston who actually signed the order of appointment in this case.[1] PCR Tr. 718, 823. Stone noted he had his first telephone contact with Sims on January 6. PCR Tr. 718. He stated that Judge Hughston (not Judge Brown) told him that there was a death penalty case in Orangeburg, but Stone advised him that he had not heard about it. Stone testified that he did not know where or why he was appointed, that he recognized that it was different now because you chose the county, but then the only way his name would have been on a list was because he handled cases in that county. PCR Tr. 823-24.

In the Order, this Court summarized counsel Stone's testimony that he thought he was required to put his name on conflict list outside of places he had a conflict. PCR Tr. p. 1131, ll. 9-25. The summary of the PCR testimony in the Order at page 35 is correct.[2]

Further, the Applicant makes a general incorrect assertion that an attorney is never obligated to accept appointment in a criminal case or capital case. However, the general obligation of the bar to accept judicial appointment is set out in SCACR, Rule 407, Rule 6.2 (accepting appointments). See also, Ex Parte Dibble, 279 S.C. 592, 310 S.E.2d 440 (S.C. App. 1983) ("traditionally held that a lawyer, by accepting a license to

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[1] According to the records of the Clerk of Court for Orangeburg County, an Order of Appointment for Michael Deangelo (aka Bayan Aleksey) was entered on January 6, 1998 for Thomas Sims and Duffie Stone. Consistent with Mr. Stone's testimony, the Orders were entered by Judge Thomas L. Hughston.

[2] Thomas Sims testified that he was not aware how Sims got appointed. PCR Tr. 70.

practice law, becomes an officer of the court and assumes the obligation of representing, without pay, indigent defendants in criminal cases."). The theme of Applicant's assertion otherwise was assessed and rejected in the original order. Order, p. 27-74.

Trooper Stack Matter

In his Rule 59 Motion, Applicant raises an issue concerning the finding that he had failed to prove that Mr. Stone represented Trooper Stack. The testimony was properly summarized that counsel Stone knew Trooper Stack and spoke with him concerning the Brown v. Shelton case. PCR Tr. 790-92, 805-06. The Motion to Alter is denied. He failed in his burden of proving that Stone actually represented Trooper Stack through specific assignment of the Insurance Reserve Fund in an attorney-client relationship.

PARTICULAR STANDARDS OF REVIEW

In his motion, he argues that the Court applied an improper standard of review in assessing the particular allegations. This Court concludes that standards it applied throughout the Order were correct. In reference to ineffective assistance of counsel claims, other than conflict of interest issues, the Court applied the mandate of Strickland v. Washington, 466 U.S. 668 (1984) that the Applicant had the burden of proof to show that there is a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different. [3]

[3] This Court is aware of the recent opinion by the United States Supreme Court in Sears v. Upton, 130 S.Ct. 3259 (June 29, 2010) issued after the motion hearing. In Sears, the Court held that the state PCR court failed to apply the proper prejudice inquiry in determining that counsel's facially inadequate mitigation investigation did not prejudice the defendant. The Court stated that the proper prejudice standard requires a probing and fact-specific analysis that considers the totality of the available mitigation evidence, both that adduced at trial and the evidence adduced at the PCR proceedings, in order to assess whether there is a reasonable probability that the defendant would have received a different sentence after a constitutionally sufficient mitigation investigation. The Court stated that this standard will necessarily

Concerning alleged claims of the prosecution's failure to disclose alleged exculpatory evidence under Brady v. Maryland, 373 U.S. 83 (1963), the Court applied in each specification the materiality prong set out in Kyles v. Whitley, 514 U.S. 419 (1995), and Strickler v. Greene, 527 U.S. 263, 280-81 (1999). See Order, p. 186. See also, Cone v. Bell, 129 S.Ct. 1769 (2009). Particularly, the materiality standard for Brady issues is met "when the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict." Kyles v. Whitley, 514 U.S. at 435. Stated another way, the "touchtone of materiality is a reasonable probability" of a different result, and the adjective is important. The question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he receive a fair trial understood as a trial resulting in a verdict worthy of confidence. Kyles, supra. These are the standards applied to these issues.

Concerning allegations of use of known false or perjured testimony, the Court applied the standards of Giglio v. U.S., 405 U.S. 150 (1972) and Napue v. Illinois, 360 U.S. 264, 269-270 (1959). Order, p. 233. Particularly, the materiality standard applied was whether there is any reasonable likelihood that the false testimony could have affected the judgment of the jury. Order, p. 235.[4]

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require a court to speculate as to how much or how little mitigation evidence was presented during the initial penalty phase.

[4] The South Carolina Supreme Court addressed this standard in a recent PCR appeal in Simpson v. Moore , 367 S.C. 587, 601, 627 S.E.2d 701, 708 (S.C. 2006).

> "A conviction obtained by the knowing use of perjured testimony is fundamentally unfair and must be set aside if there is any reasonable likelihood that the false testimony could have affected the jury's judgment. *U.S. v. Bagley,* 473 U.S. 667, 678, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985). The knowing use of perjured testimony is subject to the materiality standard of review: "evidence is material

At the hearing, the Applicant specifically asserted the Court misapplied the Napue standard in its assessment of the claim related to Jamie Farrell set out at Order, page 254-255. in the Order, in addition to finding that Aleksey had failed in his burden to show the testimony of Farrell was "knowingly false", [Order, p. 254], the Court further found "the Applicant had failed to show the discrepancy was material in such a manner that there was a reasonable likelihood that it affected the judgment of the jury in the sentencing proceeding." Order, p. 255. In Giglio v. U.S., 405 U.S. 150 (1972), the Court, citing Napue, stated: "a new trial is required if the false testimony could ... in any reasonable likelihood have affected the judgment of the jury." Accord, U.S. v. Bagley, 473 U.S. 667 (1985). For the reasons set forth within the Order, this Court clarifies that the Applicant failed in his burden of proof to show the existence of false evidence that was material and failed to show "any reasonable likelihood that the false evidence could have affected the judgment of the jury" and the sentence.

INDEPENDENT ORDER

In his motion, Aleksey through counsel continue to complain concerning the development of the Final Order of Dismissal based upon a request for a proposed order from the State. In his motion, Applicant recognized that there were differences between the State Proposed Order and the Final Order of Dismissal produced by this Court. This Court is aware of its obligation to painstakingly review the proposed order under Hall v. Catoe, 360 S.C. 335, 601 S.E.2d 335 (2004). Cf. Simpson v. Moore, 367

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only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *Id.* at 682, 105 S.Ct. 3375."

Simpson v. Moore, 367 S.C. 587, 601, 627 S.E.2d 701, 708 (S.C. 2006).

S.C. 587, 627 S.E.2d 701(2006). [5] This Court reviewed each page of the state's original proposed order subsequent to receipt of the requested order page by page, line by line. I checked with the assistance of the law clerk, the citation references made in the proposed order before adopting those references with an independent eye, consistent with the court's intended findings of fact. The Applicant must recognize that this Court had previously reviewed the extensive briefing by the parties and had requested the proposed order after I considered those pleadings. The initial proposed order was requested after that independent review of the pleadings of the parties. In addition, after the proposed order was received, counsel for the Applicant made his timely objections to the proposed order. This Court did not merely sign the Proposed Order without sufficient time to review and consider. To the contrary, this Court thoroughly reviewed over an extended period of time. The Court revised the portions of the Order after further consideration of the Applicant's "Objections to the Proposed Order."which it deemed both appropriate and necessary before filing the final order. Section 17-27-160(D).

The Applicant's request to alter and amend its order to vacate the order in its entirety because of the request and partial use of a "proposed order" must be denied.

Prison Adaptability Issue (Order p. 113-122)

In his motion, the Applicant asserts that the Court ignores the fact that prison condition testimony is inadmissible unless very narrowly tailored", citing State v.

[5] In Hall v. Catoe 360 S.C. 353, 365, 601 S.E.2d 335, 341 (S.C.,2004), the Court stated : "Although we strongly encourage PCR judges to draft their own findings of fact and conclusions of law in death penalty cases, we also acknowledge that in all other cases, it is common practice for judges to ask a party to draft a proposed order for the sake of efficiency. In the present case, the evidence sufficiently indicates that the PCR judge spent an adequate amount of time reviewing the order before adopting it."

Bowman, 366 S.C. 485, 623 S.E.2d 378 (2005) and State v. Burkhart, 371 S.C. 482, 640 S.E.2d 450 (2007). Motion to Alter, p. 13. However, this Court cited to the existence of the Bowman and Burkhart opinions – both which occurred after initial briefing – in the Order at page 113, n.23. This Court, at the time of the Order was aware of the progression of the prison condition issue through the Court. In viewing a Strickland analysis, it must be viewed from counsel's perspective at the time the case was tried in 1998, well before the Supreme Court's 2005 advisory in Bowman. When the Order was prepared, like the process recently stated in Sears v. Upton, this Court used a probing and fact-specific analysis that considered the totality of the available mitigating evidence produced at the trial and at the PCR proceeding in order to assess whether there was a reasonable probability that the defendant would have received a different sentence. As stated in the analysis in the Order, pages 113-122, the failure to present James Aiken did not undermine confidence in the outcome under Strickland.

Social Worker Claim (Order p. 122-134)

In the motion, p. 13, Applicant relies upon Council v. State, 380 S.C. 159, 670 S.E.2d 356 (2008). Council was not cited in the particular portion of the Order, but does not revise the analysis of the Court. The strategic decision in the mitigation presentation went beyond the mother's testimony because it was whether to risk the use of MSW David Rosengard. Order, p. 131-134. The motion to alter is denied.

The Purchase of the Lexus and Motorcycle

In his motion to alter, p. 14, Aleksey asserts that the portion of the Order concerning the purchase of the Lexus and the motorcycle was incorrect. This portion of the Order was a summary of counsel Stone's testimony at the PCR hearing. A review of

the record reveals that when a question was asked concerning whether he investigated Ms. Watson concerning misstatement in applications, counsel Stone made a general answer about looking into Perez and Watson and stated: "everything that we were getting from these women as far as ... we went off and bought a Lexus together, or yes we went off and bought a motorcycle together and things like that were consistent with the [fact] there was a relationship, it was a romantic relationship at some level, ... it showed that he knew how to get out of trouble if he needed to." PCR Tr. 1185-1186. The specific reference to Ms. Watson as the purchaser of the Lexus was incorrect in the testimony summary.[6]

Yelena Batkilina and Gun

In his motion, p.14, the Applicant challenges the summary of counsel Stone's testimony in Order, p.142 that "at one point during Mr. Stone's conversations with his client, Mr. Aleksey told him that Yelena Batkilina held him at gunpoint, but at another time threw the gun on his lap or even handed him the gun." Order p. 142, paragraph 1. The cited reference to PCR Transcript p. 1183. A review of the record reveals that this testimony was not in reference to Batkilina, but was in reference to Gloryvee Perez. PCR Tr. 1183-84.[7] However, the summary concerning Batkilina's purchase of the gun with Aleksey is correct. PCR Tr. 1181-82. See ROA 916-920.

The motion is granted to this limited extent to amend Order, p. 142.

Women as Innocent Victims

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[6] Testimony from the trial was that Lisa Watson was involved with Aleksey in the lease of the White Mustang, that she ultimately reported as stolen. ROA 1278-1287. Teresa McCann testified about the purchase of the Honda CVR 600 motorcycle by Aleksey. ROA 1873. She said the motorcycle was dumped into Prospect Park Creek in Pennsylvania. ROA 875.

[7] However, Perez testified at trial on cross-examination that she never saw Michael with a gun prior to that night. ROA 1310, 1338. See also ROA 1326-27, 1334-34.

In his motion at page 22, the Applicant takes issue with the Court's statement in the Order, p. 221, that "[F]urther, Solicitor Bailey asserted that he never sought to present any of Mr. Aleksey's women to be innocent people, but instead were the types he would associate with", citing PCR Tr. 1335. Contrary to the claim of Applicant, this summary statement was accurate based upon the following testimony of former Solicitor Bailey:

> I never presented any of these young women that they were young debutantes that were innocent people that just happened to get taken in by him. I mean they were all people like the kind of people he would be associated with.

PCR Tr. p. 1335, ll. 17-21. The motion is denied.

The Applicant seeks to impeach the Solicitor's statement by reference to the penalty phase closing argument, ROA 2109-2110, wherein Solicitor Bailey noted that Aleksey lived off women he had taken in and was a parasite to women. Contrary to the Applicant's claim, the argument does not suggest that the women were "innocent", but that they had the "misfortune to encounter Bayan Aleksey at a time in their lives when they were vulnerable." ROA 2109, ll. 15-20. His motion to amend is denied.

Testimony About the Date of the Gun Purchase

In his motion, p. 24, Aleksey asserts that the Order at pages 225-26 made a "factual finding that the state did not falsely present these dates [of the gun purchase]." The Court has reviewed its findings and conclusions concerning the presentation of the evidence concerning the date of the gun purchase as November 2, 1996. ROA 931, 932, State Exhibit 3,4. The Court denies the motion to amend pages 225-226.

Lisa Watson Issue

In the motion, Aleksey objects to this Court's findings related to Lisa Watson within the Order at pages 243-247. particularly, the complaint is that the Court cited the

Strickland prejudice standard as it relates to a Brady materiality issue as it relates to the so-called "Western Union scam." A review of the Order reveals the Brady claim was addressed at pages 240-44. This Court cited the appropriate "reasonable probability" standard of materiality from Banks v. Dretke, 540 U.S. 668 (2004) [Order, p. 240-41] and cited Kyles v. Whitley, 514 U.S. 419 (1995) and "undermine confidence in the outcome" language. Order, p. 243-44. The conclusion stated that Watson was "merely a part-victim, part participant in the state's theory as well." The Court concluded: "The alleged failure to disclose the matters where evidence of her claimed actions in the husband's credit card had been revealed in her statement and the FMC documents, does not undermine confidence in the verdict under the Kyles test." Order, p. 244. Contrary to the assertion of Aleksey, the Court did apply the "reasonable probability" test of Kyles. The motion is denied. The Court notes that the portion of the Order from pages 244-47 was an ineffective assistance of counsel discussion, not Brady.

Jamie Farrell Findings On Giglio v. Napue Claim

In his motion, page 26, Aleksey initially seeks to alter and amend this Court's findings in the Order, p. 253, because it allegedly endorsed the Solicitor's assertion that he did not portray the women as victims. First, as stated above, the prosecution argument did not simply portray as innocent, but did portray them as vulnerable. A review of the Order, p. 253 does not support Aleksey's characterization of the Order. This Court found that "[u]nder the state's theory, Ms Farrell was a willing participant in Mr. Aleksey's scams of fraud. The state brought out that Ms. Farrell was arrested for and responsible for the $10,000 loss and was aware that the withdrawals to her account were made" citing PCR 1397, 1412-12 and ROA 1900-02.

The Court denies the motion to alter. A review of the trial transcript supports these original findings. ROA 1900-02. The record supports that she was arrested for the scam [ROA 1900, l. 22], that she put $20 into opening an account because she thought Aleksey was unable to open an account because he had claimed bankruptcy [ROA 1897], that Aleksey had told her he was getting $10,000 wired into the account, and that she was aware that Aleksey was withdrawing monies from the account. [ROA 1900]. She stated that as a result of this activity she had to pay back $10,000 and was still paying it back. ROA 1902, l. 5-6.

Applicant additionally asserts that the motion to alter should be granted as to Order, p. 254-255. Particularly, he asserts that the Order emphasizes that Ms. Farrell was a victim and testified falsely about the withdrawal of the money. This was addressed within the Order at pages 254-255 with specific reference to the trial and post-conviction relief testimony. Upon review of that portion of the order and page citations, this Court denies the request to alter and amend.

The Applicant further complains that in this portion of the Order, the Court applied the standard related to Brady claims rather than claims concerning the knowing use of false testimony under Giglio v. Napue. As stated above, this Court was applying the Giglio standard. For the reasons set forth within the Order, this Court again clarifies that the Applicant failed in his burden of proof to show the existence of false evidence that was material and failed to show "any reasonable likelihood that the false evidence could have affected the judgment of the jury" and the sentence. The Motion is denied.

Summary

The Court has carefully considered the twenty-seven (27) page Motion to Alter and Amend, the arguments of counsel at the May 4, 2010 motion hearing and reconsidered the February 5, 2010 Order. This Court is constrained, with the exceptions noted within this Order, to deny the Motion to alter and amend. Although portions of the motion may not have been specifically address within this Order, those portions of the Motion are denied after full consideration. This Court finds that its original order is supported by the record and expresses this Court's independent findings of fact and conclusions of law. Moreover, this Court is unable to discover any material fact or principle of law that has either been overlooked or disregarded and further finds no error of law or fact not appropriately considered.

ACCORDINGLY, the Applicant's Motion to Alter and Amend is granted in part and denied in part pursuant to SCRCP Rule 59. The application for post-conviction remains denied.

AND IT IS SO ORDERED THIS 7 day of Sept, 2010.

Diane S. Goodstein, Circuit Court Judge

First Judicial Circuit

South Carolina

5335

Case # [illegible]

1 of 3

STATE OF SOUTH CAROLINA
COUNTY OF Orangeburg
EXHIBITS

Plaintiff(s) Bayan Alekseev Aleksey

vs.

Defendant(s) State

~~PLAINTIFF'S~~ Applicants' EXHIBITS	~~DEFENDANT'S~~ EXHIBITS	COURT'S EXHIBITS
1 Attorney notes	21 multi-page document	41 Gloryvee Blackwell checks
2 3-6-98 letter	22 Danetta's notes	42 transcript - B audiocassette tape - A
3 Yelena Batkilina Plea/Sents. trans.	23 letters Age	43 SLED Statement
4 trace report	24 Gloryvee Perez I.D.'s	44 Rental Installment contract & security Agreement
5 Bond hearing trans.	25 Blackwell affidavit	45 New Rochelle Police Report/Thresa McCann
6 Information	26 A-G Photos	46 Affidavit Vincent Caruso
7 rap sheet	27 Affidavit Elizabeth Blackwell	47 Rap Sheet - Ferrell
8 Plymouth township report incident	28 Property Receipt	48 7 pages of Photos
9 Lower Moreland Police Report	29 Hotel, motel, telephone receipts	49 2 "checks" - Xerox
10 Burdumy Motors docs	30 Sold	50 Farrell Statement
11 Yelena Batkilina NY driver's license	31 Affidavit Pat	51 Guilty Plea transcript Rivera
12 Philadelphia PD Report incident	32 two checks	52 Rap Sheet: Sara Rivera
13 Affidavit	33 Affidavit Keith Randall	53 4-page document Rivera
14 6-page fax document	34 Trenton Police Division Investigation Report	54 3 page information
15 letter 1-7-98 Kim Rickis Pattin	35 Burlington Lincoln Mercury documents	55 45-pages of docs
16 audiocassette tape	36 Summit Bank documents 1 page	56 "Love" letters
17 3-pages of documents	37 Gloryvee Riveria Guilty Plea trans. Trenton, NJ	57 10-17-01 letter
18 multi-page document	38 Property Receipt of Gloryvee Blackwell	58 Lawsuit summons
19 Pennsylvania DC	39 Affidavit of Christopher Sontag	59 2-19-99 letter
20 2-page Statement	40 Summit Bank Notice of Hold - 40	60 3-7-letter

Court Reporter Julie L Kon

Clerk of Court

Date 7-10-03

STATE OF SOUTH CAROLINA
COUNTY OF Orangeburg
EXHIBITS

Plaintiff(s) Bayan ~~Alekseev~~ Alekseev

vs.

Defendant(s) State

take's ~~PLAINTIFF'S~~ EXHIBITS	DEFENDANT'S EXHIBITS	Applicant's ~~COURT'S~~ EXHIBITS
(1) May 25, 1999 letter	1	(61) mr. Stone's notes
(2) June 3, 1998 letter	2	(62) 1-31-97 letter
(3) checks	3	(63) Tina Lawing's notes
4	4	(64) memo Tina to Duffie
5	5	(65) Stone's typed notes
6	6	(66) Tina's time sheet
7	7	(67) 2-19-99 letter
8	8	(68) Bill from Quantico
9	9	(69) CV Saul Kassin
10	10	(70) Jan 8, 98 transcript Feb. 2, 98
11	11	(71) Feb. 22, 99 letter from Stone to Alekseev
12	12	(72) Notebook of News Paper Articles
13	13	(73) ~~Letter~~ Receipt Receipt of Hans Gold
14	14	(74) ~~Phone~~ Stone record
15	15	(75) 4 checks
16	16	(76) money order
17	17	(77) photo
18	18	(78) photo
19	19	(79) Notice of Warrant
20	20	(80) letter

Court Reporter Felicia R. Earl

Clerk of Court _____

Date 7-10-03

5337

Case #

3 of 5

STATE OF SOUTH CAROLINA
COUNTY OF

EXHIBITS

Plaintiff(s) Gayla Hickey

vs.

Defendant(s) State

PLAINTIFF'S EXHIBITS	DEFENDANT'S EXHIBITS	COURT'S EXHIBITS
81 letter Aug. 3, 98	1	1
82 letter	2	2
83 Case Summary & file	3	3
84 Agent Mears Notes A+B	4	4
5	5	5
6	6	6
7	7	7
8	8	8
9	9	9
10	10	10
11	11	11
12	12	12
13	13	13
14	14	14
15	15	15
16	16	16
17	17	17
18	18	18
19	19	19
20	20	20

Court Reporter Rebecca R. Ford

Clerk of Court

Date 7-10-03

Judge → 6. James F. Schrump Jr.
discussed this case
1st group probably
with whom
What opinion
- less crossed; white shirt; tied and blue pants; legs crossed at knee

(Disqualified)

Judge → 7. Robert Goodwin #115
Laid back looking at judge former & Truck Driver; said that he is 3rd Group
- Said that he could not take a life

(Disqualified)

Judge → 8. Gigi S. Hayes
looking directly at the judge
3rd group

leader

Walter → leaning forward Walter; not any knowledge

Duffie → Briefly looked at def. Saw News

No
Possibly knows
The deceased
Talk w Charles



339

Dear Mr Sims. I want you to know that wh
was Questioning me. They told me that IF I say I did it.
that I would get out of Jail w 5 years that they would help n
when they wer w the office. The Black SIED Agent said that +
me and then the white SIED Agent DARWell said the san
thing. The SIED Agents then Beat the shit out of me. when
I didn't Agree.

P.S. When I told the captain
about the letters I got of
Killing me and my family!
he said I should'nt give them to you.

Please help me!
BRIAN R. Alekseev
Bryan R. Alekseev
march, 6, 1998

Bryan Alekseev
march, 6, 1998

Applicant's EXHIBIT #2 I.D.

Can You send me a letter. Saying I can call you mondays &
wednsdays & - Friday. I can't call you unless I have that letter.
I was told that I need a letter, But the S.C.D.C Rules Book
says I can call Any time I need a legel Phone call.
I won't call you unless I have to. But when the captain and
I.T. SGT wer getting me w the office ask Questions. I said to the
I want to call my lawyer. they said no. Show me a letter.

Bryan Alek

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN
AND FOR OSCEOLA COUNTY, FLORIDA

CASE NO. CR97-1441

STATE OF FLORIDA,

PLAINTIFF,

-VS-

YELENA BATKILINA,

DEFENDANT.

_____/

COPY

TRANSCRIPT OF PLEA AND SENTENCING HELD ON MARCH 12, 1998, AT THE OSCEOLA COUNTY COURTHOUSE, KISSIMMEE, FLORIDA, BEFORE THE HONORABLE ANTHONY H. JOHNSON, CIRCUIT COURT JUDGE.

A P P E A R A N C E S:

PHILIP TOWNES, ASSISTANT STATE ATTORNEY, 20 SOUTH ROSE AVENUE, SUITE 2, KISSIMMEE, FLORIDA 34741; ON BEHALF OF THE STATE OF FLORIDA.

THOMAS C. GREEN, ESQ., 613 E. FIRST STREET, SANFORD, FLORIDA 32772-0695; ON BEHALF OF THE DEFENDANT.

Applicant's EXHIBIT EV. #3

PROCEEDINGS

THE COURT: MR. GREEN, IS YOUR CLIENT READY?

MR. GREEN: YES, YOUR HONOR.

THE COURT: TELL ME HER NAME.

MR. GREEN: YELENA BATKILINA.

THE COURT: ALL RIGHT.

YELENA BATKILINA,

HAVING BEEN FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

EXAMINATION

BY THE COURT:

Q TELL ME YOUR NAME, PLEASE?

A YELENA BATKILINA.

Q IS THAT THE NAME ON YOUR BIRTH CERTIFICATE?

A YES.

THE COURT: GO AHEAD AND SIGN THAT, IF YOU WISH.

MR. GREEN: JUDGE, THIS IS A NEGOTIATED PLEA TO THE LESSER-INCLUDED OFFENSES IN COUNT I. THIS WILL BE AN ATTEMPT TO COMMIT FRAUDULENT USE OF A CREDIT CARD, WHICH IS A MISDEMEANOR OF THE FIRST DEGREE. AND AS TO COUNT II, WOULD BE CONSPIRACY TO COMMIT GRAND THEFT, WHICH IS ALSO A MISDEMEANOR OF THE FIRST DEGREE.

THE NEGOTIATIONS ARE THAT THE DEFENDANT WILL BE ADJUDICATED GUILTY, SHE WILL BE PLACED ON TWO TERMS OF ONE-YEAR COUNTY PROBATION TO BE SERVED CONSECUTIVELY OR TWO YEARS' TOTAL PROBATION.

DURING HER PROBATION, SHE WILL BE REQUIRED TO PAY RESTITUTION WHICH I WILL NEED TO TALK TO YOU ABOUT A LITTLE BIT IN A MINUTE. SHE WILL BE ABLE TO TRANSFER TO PENNSYLVANIA WHERE SHE IS A RESIDENT. SHE WILL SERVE NO FURTHER JAIL TIME AND HAVE NO CONTACT WITH THE UNINDICTED OR NO INFORMATION FILED ON CO-DEFENDANT. THAT BASICALLY IS THE CONDITIONS OF THE PLEA.

THE COURT: WHAT'S THE NAME OF THE CO-DEFENDANT?

MR. GREEN: TO BE HONEST WITH YOU, JUDGE, HE HAS SO MANY ALIASES. I THINK HIS REAL NAME IS BAYAN ALEKSEY.

EXAMINATION

BY THE COURT:

Q MA'AM, YOU ARE HERE CHARGED WITH THESE TWO MISDEMEANOR OFFENSES. YOU WERE CHARGED WITH GREATER OFFENSES, BUT I AM TOLD YOU ARE GOING TO ENTER YOUR PLEAS TO THESE MISDEMEANOR OFFENSES. THESE ARE PUNISHABLE BY UP TO ONE YEAR IN THE COUNTY JAIL.

YOU HAVE A RIGHT IN EACH CASE TO BE REPRESENTED BY A LAWYER AND YOU ARE.

ARE YOU HAPPY WITH THE SERVICES YOUR ATTORNEY HAS PROVIDED TO YOU?

A YES.

Q HE IS A VERY EXPERIENCED LAWYER, AND I AM SURE HE HAS TOLD YOU ALL THE THINGS I AM TELLING YOU NOW.

IF YOU ENTER A PLEA TODAY OF GUILTY TO THE OFFENSE

OF ATTEMPTED FRAUDULENT USE OF A CREDIT CARD AND CONSPIRACY TO COMMIT GRAND THEFT IN THE THIRD DEGREE, YOU WILL BE GIVING UP YOUR RIGHT TO A JURY TRIAL, IN WHICH THE STATE WOULD HAVE TO PROVE THE CASE AGAINST YOU BEYOND AND TO THE EXCLUSION OF EVERY REASONABLE DOUBT TO A UNANIMOUS JURY VERDICT.

YOU WOULDN'T HAVE TO DO ANYTHING. YOU WOULDN'T HAVE TO TESTIFY. YOU COULD IF YOU WANTED TO. YOU WOULDN'T HAVE TO CALL WITNESSES, BUT YOU COULD IF YOU WANTED TO.

DO YOU UNDERSTAND THE RIGHTS YOU WOULD BE GIVING UP?

A YES.

Q IS THAT WHAT YOU WANT TO DO? DO YOU WANT TO ENTER THESE TWO PLEAS TO THESE MISDEMEANORS?

A YES.

Q THERE IS A FORM IN FRONT OF YOU WE CALL A PLEA FORM. HAVE YOU READ IT?

A YES.

Q DID YOU SIGN IT?

A YES.

Q DID YOU UNDERSTAND IT?

A YES.

Q DO YOU HAVE ANY QUESTIONS ABOUT IT?

A NO.

Q HAVE YOU EVER BEEN TREATED FOR A MENTAL DISORDER?

A NO.

Q HAS ANYBODY PROMISED YOU ANYTHING OTHER THAN WHAT YOU HEARD US SAY RIGHT HERE TODAY IN COURT?

A NO.

Q I HAVE TO TELL YOU IF YOU'RE NOT A CITIZEN OF THE UNITED STATES, THIS PLEA COULD BE USED TO DEPORT YOU. IF YOU WERE ON PROBATION, THIS PLEA COULD BE USED TO VIOLATE YOUR PROBATION.

THE COURT: STATE, FACTUAL BASIS, PLEASE.

MR. TOWNES: YOUR HONOR, ON THE DATE CHARGED IN THE INFORMATION HERE IN OSCEOLA COUNTY, MS. BATKILINA USED A CREDIT CARD NUMBER THAT DIDN'T BELONG TO HER TO RENT A CAR FROM A.N.A. AUTO RENTAL. THEY PUT DOWN A CASH DEPOSIT, SHE AND THE GUY WITH HER, AND THEN EXTENDED THE RENTAL ACTUALLY WITH -- AT FIRST THEY STARTED OUT WITH A VISA CARD THAT IS GOOD AND THE CASH. THEN THEY EXTENDED THE RENTAL WITH THIS CARD NUMBER THAT DIDN'T BELONG TO THEM, IS WHAT IT WAS. SHE MAY OR MAY NOT HAVE BROUGHT BACK THE CAR, BUT IT SORT OF NEVER MATERIALIZED AS FAR AS WE CAN TELL.

THE OTHER FELLOW SHE IS NOT TO HAVE ANY MORE CONTACT WITH, AS I UNDERSTAND IT, IS PENDING A FIRST DEGREE MURDER CHARGE FOR SHOOTING A POLICE OFFICER IN SOUTH CAROLINA, SO I DOUBT IF HE WILL BE OUT ON BAIL ANY TIME SOON.

THE COURT: I DO FIND SHE IS ALERT AND INTELLIGENT

AND THAT SHE UNDERSTANDS HER RIGHTS TODAY AND THAT SHE IS KNOWINGLY ENTERING THIS PLEA AND GIVING UP THESE RIGHTS.

I WILL ACCEPT HER PLEA, ADJUDICATE HER GUILTY OF EACH OF THE TWO CHARGES, ATTEMPTED FRAUDULENT USE OF A CREDIT CARD AND CONSPIRACY TO COMMIT GRAND THEFT IN THE THIRD DEGREE.

IN EACH CASE SHE WILL BE PLACED ON ONE YEAR'S SUPERVISED PROBATION, COUNTY PROBATION, AND THOSE TWO TERMS OF PROBATION WILL RUN CONSECUTIVE TO ONE ANOTHER. AND EACH OF THOSE WOULD HAVE THE SAME CONDITIONS, ALTHOUGH THE CONDITION YOU ONLY HAVE TO DO ONCE, AND THAT IS, TO MAKE RESTITUTION. I WILL RESERVE JURISDICTION TO DETERMINE TO WHOM AND IN WHAT AMOUNT RESTITUTION SHOULD BE MADE. AND YOU HAVE A RIGHT TO BE HEARD IF YOU DISPUTE IT.

I WILL ORDER YOU HAVE NO CONTACT WITH BAYAN ALEKSEY, NOT DIRECT OR INDIRECT OR OTHERWISE.

YOUR FINE WILL BE $170.50. I DON'T THINK THERE ARE ANY OTHER MATTERS. I HAVE NO OBJECTION TO YOU TRANSFERRING THE SUPERVISION OF YOUR PROBATION UP TO PENNSYLVANIA. $270 COST OF INVESTIGATION.

MR. GREEN: JUDGE, THERE WAS $270 COST OF INVESTIGATION. SO IT'S CLEAR, THE VEHICLE WAS FOUND AT THE PHILADELPHIA AIRPORT. THERE IS A QUESTION AS TO WHY

THAT WAS NOT REPORTED TO THE KISSIMMEE POLICE DEPARTMENT. IT SAT UP THERE FOR A LONG TIME.

I JUST WANT YOU TO KNOW THAT THE RENTAL CAR AGENCY HAS A CLAIM WITH THE PHILADELPHIA POLICE DEPARTMENT FOR THAT ISSUE, AND MY CLIENT DOESN'T WANT TO BE STUCK WITH THE LOSS OF THE RENTAL WHILE THERE WAS A MIX-UP BETWEEN KISSIMMEE P.D. AND PHILADELPHIA P.D.

THE COURT: I DON'T KNOW WHETHER THAT IS AN APPROPRIATE MEASURE. IF THE TWO OF YOU CAN'T AGREE ON IT, THEN WE WILL HAVE A HEARING AND I WILL DO WHATEVER THE LAW SAYS I OUGHT TO DO.

MA'AM, YOU HAVE THIRTY DAYS WITHIN WHICH TO APPEAL THE JUDGMENT AND SENTENCE OF THE COURT.

GOOD LUCK TO YOU.

(HEARING CONCLUDED.)

CERTIFICATE OF REPORTER

STATE OF FLORIDA)

COUNTY OF OSCEOLA)

I, LARRY KRAUBETZ, REGISTERED PROFESSIONAL REPORTER, CERTIFY THAT I WAS AUTHORIZED TO AND DID STENOGRAPHICALLY REPORT THE FOREGOING PROCEEDINGS AND THAT THE TRANSCRIPT IS A TRUE AND COMPLETE RECORD OF MY STENOGRAPHIC NOTES.

DATED THIS 22ND DAY OF MARCH, 2000.

LARRY KRAUBETZ,
REGISTERED PROFESSIONAL REPORTER

DEPARTMENT OF THE TREASURY
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS
NATIONAL TRACING CENTER

Phone: (800) 788-7133
Fax : (800) 578-7223
Print Date: January 7, 1998

FIREARMS TRACE REPORT

Trace Number: 9946341

ATF
Scott Etheridge
Charleston I (Achilles)
1 Poston Road, Room 325
Charleston, SC 29407-3431

Request Date: Friday, January 02, 1998

ATF Investigation Number: 741503

DESCRIPTION OF FIREARM

Make: Bryco Arms
Model: 58
Type: Pistol
Caliber: 9
Serial Number: 749485
Country: United States of America

SUMMARY OF RESULTS

Applicant's EXHIBIT #4 E.V.

This Firearm was Purchased on: Saturday, November 02, 1996

Purchaser: Yelena Batkilina
[redacted] Welton St
Philadelphia, PA 19116

Date of Birth: [redacted]
Race: White
Sex: Female
Height: 5 ft. 3 in.
Weight: 105 lbs.
ID Type: PA Drivers License
ID No: [redacted]
Birthplace: Kiev

Notes:
Born In The Soviet Union; Batkilina Involved In Credit Card Scam, Etc.

PURCHASER HISTORY:

Batkilina is not currently associated with any other traces.

5349

...rearm was shipped to Tom's Sporting Outlet on Tuesday, October 08, 1996:

FFL Name: Tom's Sporting Outlet
FFL Number: 82337091
Address: 1030 Bristol Ave
Bensalem, PA 19020

Phone: (215) 245-7552

NOTES ON THIS FFL:

This FFL is involved with 7 other traces.

Last Regulatory Enforcement contact: April 4, 1996.

The Firearm was shipped to Euclid Sales Co Inc on Monday, September 16, 1996 :

FFL Name: Euclid Sales Co Inc
FFL Number: 15871845
Address: 2511 Forest Pkwy
Ellenwood, GA 30049

Phone: (404) 366-1330

Invoice: 7570

NOTES ON THIS FFL:

NONE

...earm was shipped to B L Jennings Inc on Wednesday, April 05, 1995 :

FFL Name: B L Jennings Inc
FFL Number: 98805792
Address: 3680 Research Way #1
Carson City, NV 89706

Phone: (702) 882-4007

NOTES ON THIS FFL:

NONE

The Firearm was recovered on Thursday, January 01, 1998 from the following location:

Address: Summerville, SC

NOTES ON THIS RECOVERY LOCATION:

Information is not detailed enough to check location history.

There are no other traces associated with your Trace Request.
This section lists information from other traces associated with your Trace Request.

Trace #	Requested By	Phone Number	Requesting Office

MESSAGE FROM THE DIRECTOR OF ATF

olence is this Nation's primary public safety issue. The number of firearms used in armed robberies, assaults, and murders have :en escalating at an alarming rate. Indiscriminate shootings spurred by an indifference toward human life are depleting the cultural id material resources of our cities. Through statutory authority and congressional mandates, we, in ATF, maintain a long standing mmitment to providing innovative unique mission areas. ATF's establishment, in 1972, of a National Tracing Center is but one tiative, albeit, a significant one that has assisted the law enforcement community in identifying violent criminals and producing vestigative leads.

John W. Magaw

5351

DEPARTMENT OF THE TREASURY

BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

NATIONAL TRACING CENTER

Phone: (800) 788-7133
Fax : (800) 578-7223
Print Date: January 7, 1998

FIREARMS TRACE REPORT

Trace Number: 9946341

ATF
Scott Etheridge
Charleston I (Achilles)
1 Poston Road, Room 325
Charleston, SC 29407-3431

Request Date: Friday, January 02, 1998

ATF Investigation Number: 741503

DESCRIPTION OF FIREARM

Make: Bryco Arms
Model: 58
Type: Pistol
Caliber: 9
Serial Number: 749485
Country: United States of America

SUMMARY OF RESULTS

This Firearm was Purchased on: Saturday, November 02, 1996

Purchaser: Yelena Batkilina
[redacted]Welton St
Philadelphia, PA 19116

Date of Birth: [redacted]
Race: White
Sex: Female
Height: 5 ft. 3 in.
Weight: 105 lbs.
ID Type: PA Drivers License
ID No: [redacted]
Birthplace: Kiev

PURCHASER HISTORY:

Batkilina is not currently associated with any other traces.

Notes:
Born In The Soviet Union; Batkilina Involved In Credit Card Scam, Etc.

The Firearm was shipped to Tom's Sporting Outlet on Tuesday, October 08, 1996:

FFL Name: Tom's Sporting Outlet
FFL Number: 82337091
Address: 1030 Bristol Ave
Bensalem, PA 19020

Phone: (215) 245-7552

NOTES ON THIS FFL:

This FFL is involved with 7 other traces.

Last Regulatory Enforcement contact: April 4, 1996.

The Firearm was shipped to Euclid Sales Co Inc on Monday, September 16, 1996 :

FFL Name: Euclid Sales Co Inc
FFL Number: 15871845
Address: 2511 Forest Pkwy
Ellenwood, GA 30049

Phone: (404) 366-1330

Invoice: 7570

NOTES ON THIS FFL:

NONE

The Firearm was shipped to B L Jennings Inc on Wednesday, April 05, 1995 :

FFL Name: B L Jennings Inc
FFL Number: 98805792
Address: 3680 Research Way #1
Carson City, NV 89706

Phone: (702) 882-4007

NOTES ON THIS FFL:

NONE

The Firearm was recovered on Thursday, January 01, 1998 from the following location:

Address: Summerville, SC

NOTES ON THIS RECOVERY LOCATION:

Information is not detailed enough to check location history.

5353

PROJECT LEAD REFERRAL LIST

There are no other traces associated with your Trace Request.

This section lists information from other traces associated with your Trace Request.

Trace #	Requested By	Phone Number	Requesting Office

MESSAGE FROM THE DIRECTOR OF ATF

Violence is this Nation's primary public safety issue. The number of firearms used in armed robberies, assaults, and murders have been escalating at an alarming rate. Indiscriminate shootings spurred by an indifference toward human life are depleting the cultural and material resources of our cities. Through statutory authority and congressional mandates, we, in ATF, maintain a long standing commitment to providing innovative unique mission areas. ATF's establishment, in 1972, of a National Tracing Center is but one initiative, albeit, a significant one that has assisted the law enforcement community in identifying violent criminals and producing investigative leads.

John W. Magaw

IN THE COURT OF COMMON PLEAS
OF BUCKS COUNTY
PENNSYLVANIA
CRIMINAL DIVISION

- - -

Commonwealth of Pennsylvania : NO. OTN E8982853
OTN E8983365

V. :

Michael DeAngelo :

- - -

Honorable Isaac S. Garb, J.

- - -

Tuesday, January 19, 1999

- - -

COPY

APPEARANCES:

C. THEODORE FRITSCH, ESQUIRE
Chief of Prosecution

GREG PROSMUSHKIN, ESQUIRE
Representing the Petitioner

Applicant's EXHIBIT #5

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MR. FRITSCH: We have another fairly brief bail matter, Your Honor. This would be Commonwealth versus Michael DeAngelo, a/k/a Sal Viccaro, a/k/a Bayan Aleksey.

MR. PROSMUSHKIN: She's here, Your Honor. Her mother's here. My understanding is that the facts are by and large stipulated. I would only put them on for a short line of questioning, Judge.

THE COURT: Wait just a moment.

- - -

THE COURT: All right.

MR. FRITSCH: Yes, Your Honor, with respect to the stipulation, it is admitted that the defendant was -- that Mr. Aleksey or Mr. Viccaro was arrested here in Bucks County as a fugitive from justice from Nassau County, New York on a larceny charge. Bail was posted by the petitioner.

He was released on February 3rd of 1998 pursuant to the posting of that bail.

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It is agreed that he did not report back to Nassau County but rather went to South Carolina where he committed a murder. He is now on death row in South Carolina.

I understand that the petitioner was a witness against him, and I have confirmed that with the South Carolina authorities. However, the Commonwealth objected to this return since technically he did not report to New York as a condition of bail.

THE COURT: Was $10,000 in cash posted?

MR. PROSMUSHKIN: Yes, Your Honor.

THE COURT: Is that what was posted?

MR. PROSMUSHKIN: Yes, Your Honor.

Your Honor, initially I would like to provide Your Honor the background, a newspaper article about this man which was in the Philadelphia Inquirer on Sunday, January 11 of last year, which places this man as a sexual predator who preyed on young innocent women, who

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would date them, wine them, dine them fill them with hopes of impending marriage and then leave them after stealing money and other things from them.

MR. FRITSCH: I have seen that, Your Honor. In speaking to the authorities in the South Carolina, as I mentioned, the petitioner was a witness against him and confirmed, in a sense, that this particular defendant did use people along the way for criminal purposes.

THE COURT: Is it your position that that's the basis on which your client posted this bail?

MR. PROSMUSHKIN: Yes, Your Honor. If Ms. Batcilina were to testify, and I can do that with Your Honor's permission.

THE COURT: Please identify yourself. Have her sworn.

* * *

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Elayna Batcilina, being duly sworn, was examined and testified as follows:

* * *

BY MR. PROSMUSHKIN:

Q. Elayna, how old are you?

A. Twenty-four.

Q. And what do you? Do you go to school? Do you work?

A. Go to school.

Q. Back in February of 1997 what did you do?

A. I bailed out Bayan Aleksey out of jail.

Q. Did you go to school?

A. I went to school, Temple University.

Q. What did you go to school for?

A. Biology major.

Q. What year were you in?

A. I was my third year.

Q. Did you have occasion to bail out a Mr. Michael DeAngelo out of Bucks County Prison in February of 1997?

A. Yes.

Q. What was your relationship with Mr. DeAngelo at that time?

A. He was my boyfriend.

Q. And how long was he your boyfriend?

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A. About seven months.
Q. Why did you bail him out of prison?
A. He was calling me every day and begging me and he was telling me that I, you know, I miss him and I love him and he said that he's going to pay me money back as soon as he get out.
Q. How much money did you need to bail him out?
A. $10,000.
Q. How did you get that money?
A. I borrowed from my mom.
Q. And did you post bail?
A. Yes, I did.
Q. What did he tell you -- did he tell you he was going to return the money to you?
A. Yes, he did.
Q. When did he tell you he was going to return the money?
A. As soon as he's going to get out of jail.
Q. What happened after he got out of jail?
A. He said he's going to go New York and get the money and I never seen him since then.
Q. Did you ever see him again after that?
A. No.
Q. Did you ever see him in South Carolina after that?

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A. Yes, I did.
Q. Why were you in South Carolina?
A. I was testifying against him.
Q. Did you go there on your own free will to testify?
A. No. I got subpoenaed from South Carolina.
Q. Did you go down there?
A. Yes, I did.
Q. Did you testify?
A. Yes, I did.
Q. Was Mr. DeAngelo convicted?
A. Yes, he did.

MR. PROSMUSHKIN: I don't have any other questions for this witness.

MR. FRITSCH: Just a few.

BY MR. FRITSCH:
Q. When you were dating him, did you know about his criminal history?
A. No, I did not.
Q. Did you know anything about the New York charge, why he was in jail?
A. No, I did not.
Q. And what was the nature of your testimony in South Carolina? What did you testify about down there?

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A. I was testifying about the gun.
Q. And what was your testimony concerning the gun, just generally?
A. Just I purchased the gun for myself and he stole it.
Q. So he -- was he with you when you purchased the gun?
A. Yes, he was.
Q. And did you purchase it at his request?
A. No, I'm not.
Q. So you purchased a gun when he was with you, and what happened to the gun after you purchased it?
A. I brought it home and I gave it to my mom and she hid it.
Q. And you testified that you -- that he stole this gun?
A. Yes, I did.
Q. Was that the murder weapon in South Carolina?
A. Yes.
Q. And he killed a state trooper in South Carolina, did he not?
A. Yes.

MR. FRITSCH: Nothing further, Your Honor.

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THE COURT: Anything else you want to present?

MR. PROSMUSHKIN: Your Honor, I would only like to present Ms. Batcilina's mother for the purpose that she will testify -- I can -- please stand up. She has difficulties with English, Your Honor.

THE COURT: She will testify to what?

MR. PROSMUSHKIN: That she lent the money to her daughter and she had to borrow the money from her friends in order --

THE COURT: You'll stipulate --

MR. FRITSCH: Stipulate to that.

MR. PROSMUSHKIN: Your Honor, with that we would rest, would only bring the case of Commonwealth versus McDonald to the Court's attention.

THE COURT: Do you have any evidence you want to present?

MR. FRITSCH: No, Your Honor.

THE COURT: Do you have any argument you want to make?

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MR. FRITSCH: Only that certainly technically she is not entitled to the bail money back. The defendant never did report to the Nassau County authorities but went to South Carolina and obviously committed a murder. Detective Killian of the Sheriff's Office has confirmed for this office that he never did report to Nassau County, New York.

THE COURT: I'll order the return of bail.

Do you have an order?

MR. PROSMUSHKIN: I don't have an order with me. I'll provide --

THE COURT: Provide me an order.

MR. PROSMUSHKIN: Yes, Your Honor. Can I provide to your chambers later today?

THE COURT: Yes, sure.

MR. PROSMUSHKIN: May I be excused, Your Honor?

THE COURT: Yes. Thank you.

- - -

(Proceedings closed)

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CERTIFICATION

I hereby certify that the proceedings, evidence, and rulings are contained fully and accurately in the notes taken by me in the trial of the above cause, and that this copy is a correct transcript of the same.

Karen W. Gorlaski
Official Court Reporter

The foregoing record of the proceedings upon the trial of the above cause is hereby approved and directed to be filed.

Isaac S. Garb, J.

LASER BOND FORM 8 © PENGAD • 1-800-631-6989

5365

IN THE CIRCUIT COURT OF OSCEOLA COUNTY, STATE OF FLORIDA

THE STATE OF FLORIDA

VS.

YELENA BATKILINA

INFORMATION # CR97-1441 B

FASTRACK CMP

ATT

1. FRAUDULENT USE OF CREDIT CARD TO OBTAIN MORE THAN $100 IN VALUE (F3-L2)

mis Comp To 2 M1

2. GRAND THEFT THIRD DEGREE (F3-L2)

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF FLORIDA:

LAWSON LAMAR, State Attorney of the Ninth Judicial Circuit prosecuting for the State of Florida in Osceola County, OR LAWSON LAMAR, State Attorney of the Ninth Judicial Circuit prosecuting for the State of Florida in Osceola County, by and through the undersigned Designated Assistant State Attorney, under oath, CHARGES that YELENA BATKILINA, between the 19th day of April, 1997 and the 24th day of May, 1997, in said County and State, did, in violation of Florida Statute 817.61, unlawfully and with intent to defraud the issuer or a person or organization providing money, goods, services or anything else of value, or any other person, use for the purpose of obtaining money, goods, or services in excess of ONE HUNDRED DOLLARS ($100.00) in a six-month period a credit card, to-wit: MasterMoney Bank Card, issued in the name of ANGELA POCHUSKI, by representing, without the consent of the said ANGELA POCHUSKI, that defendant was the holder of said credit card.

FILED IN OFFICE
LAFAYETTE COUNTY
CLERK CIRCUIT COURT
97 MAY -5 AM 11:1

ASA

1+1 Card Pub-
restitution
transfer to PA
No contact
Alex ev

LIC-

ATT

Applicant's EXHIBIT #6

Betty

S.T.

KVX

COUNT TWO

LAWSON LAMAR, State Attorney of the Ninth Judicial Circuit prosecuting for the State of Florida in Osceola County, OR LAWSON LAMAR, State Attorney of the Ninth Judicial Circuit prosecuting for the State of Florida in Osceola County, by and through the undersigned Designated Assistant State Attorney, under oath, CHARGES that YELENA BATKILINA, between the 19th day of April, 1997 and the 24th day of May, 1997, in said County and State, did, in violation of Florida Statute 812.014(2)(c)(1), knowingly obtain or use, or endeavor to obtain or use United States money current or a motor vehicle, of a value of THREE HUNDRED DOLLARS ($300.00) or more, the property of another, to-wit: A&A AUTO RENTAL or JOHN HUNT or ANGELA POCHUSKI, as owner or custodian thereof, with the intent to temporarily or permanently deprive said owner or custodian of a right to the property or a benefit therefrom, or to appropriate the property to the defendant's own use or to the use of a person not entitled thereto.

CAROLYN A. HOOVER
Notary Public, State of Florida
My comm. expires June 19, 1999
No. CC462877
Bonded thru Ashton Agency, Inc.

This information encompasses the transaction and all charges listed on Complaint Number CR97-1441 and the bond thereon is hereby superseded. The Osceola County Sheriff's Office shall substitute th charge(s) and bond indicated on the information for those on the above cited complaint.

STATE OF FLORIDA
COUNTY OF OSCEOLA

Personally appeared before me Evelyn Cranford Assistant State Attorney of the Ninth Judicial Circuit of Florida, who being first duly sworn, says that he/she has received testimony under oath from the material witness or witnesses, which if true, would constitute the offense herein, and that he/she institutes this prosecution in good faith.

The foregoing instrument was acknowledged before this 1st day of August, 19 97 by the aforementioned Assistant State Attorney who is personally known to me and who did take said oath.

Carolyn A Hoover

LAWSON LAMAR, State Attorney
Ninth Judicial Circuit of Florida

By E A Cranford
Evelyn Cranford
Designated Assistant State Attorney
Florida Bar No. 797553

Bond $1,000.00 EC/EC

5367

IN THE CIRCUIT COURT FOR OSCEOLA COUNTY, FLORIDA

STATE OF FLORIDA

Case No.: CR97-1441
DC #: _____ Officer: _____
Court Minutes (Jail/Bond/PTR)
Order of Probation/Community Control

~~NAME~~ Yelena Batkilina *

Charge(s): Ct 1 Fraud, use of credit card
Ct 2 Grand Theft 3rd degree

Judge A. Johnson, Defense Attorney Green Court Deputy Hughes

Assistant State Attorney Townes Court Reporter LK

Defendant was tried and found guilty of: _____

CHANGE OF PLEA: Defendant ✓ present ___ not present, & sworn and pled ✓ Guilty, ___Guilty-Best Interest, or ___ Nolo Contendere to:

count ____ as charged (LIO) Attempt to Fraud use credit card (F) (M) /

count ____ as charged (LIO) Conspiracy (commit) to grand theft 3rd degree (F) (M) / nolle prosequi all other counts.

✓ Adjudged Guilty ____ Adjudication of Guilt Withheld
____ Minimum Mandatory/Habitual Offender: _____ years.

SENTENCE:

✓ 1. 1 (Days)/Months/Years OCJ w/ 1 Days CTS; Count _____

____ 2. ____ Days/Months/Years DOC w/ ____ Days CTS; Count _____

____ 3. Split Sentence: ____ months/years jail/DOC, then ____ months/years C.C.1/2, followed by ____ months/years probation.

____ 4. Youthful Offender: ____ Boot Camp recommended

____ 5. Concurrent: _____/or to all counts & sentences.

____ 6. Consecutive: To _____/all counts and other sentences.

PROBATION:

Consecutive 1 yr Ct 2

✓ 7. State Probation____mo/yr; C.C.1____mo/yr; C.C.2____mo/yr; County Prob. 1 mo (yr) Ct 1
You must immediately report, in person, or the next working day, or upon release from confinement to the DOC Probation Office at 1601 North Bermuda Avenue, Kissimmee, FL, 34741.

____ 8. Drug Offender Probation: Monthly drug testing, own expense; 1st positive, then treatment & counseling; thereafter violated.

___ 9. PROBATION-SPECIAL CONDITIONS: Special conditions are to be started or completed within 60 days of sentencing or violation.

____ Life skills
____ VIP program
____ Bridge Program
____ Aids/HIV awareness class
____ Community Service _____ hours
____ DNA sample
____ Spouse abuse counseling
____ Forfeit seized weapon(s)
____ DUI Counter Attack School

___ Sex Offender: See attached sheet.
___ Vehicle: You shall park & not operate your vehicle for the next ____ days. Your license plate and DL shall be held in court file.
___ Drivers License: Suspended/revoked for ___ days/months/life.
___ PEG: Enroll within 15 days and complete, unless mentally unable.
___ Jail Weekend Work Detail: You will report to Osceola County Jail within 10 days of today and report to the Classifications Office, show them your court papers and they will set up your work schedule. You shall perform _____ days of weekend work detail. You shall pay $15.00 per day and bring your own lunch. You shall perform such work as directed.
___ Jail Weekend Confinement: You will report to Osceola County Jail on _____, 1998 for confinement from Friday 7:00 P.M. to Sunday 7:00 P.M. for _____ consecutive weekends. You shall pay $75.00 per weekend.
___ Letter of apology: To victim(s) and give letter to probation.
___ Drug Testing: Random drug testing, 1st positive test then evaluation, treatment; thereafter violated.
✓ No contact/___ Hostile: Victim(s)/Beyn co-defendant(s)/no return to crime scene.
___ Mental Health Evaluation: Mental health and/or psychological evaluation and treatment. You shall take medicine as prescribed. Failure to be tested, participate in treatment, or to take your medicine will constitute a violation.
___ Early Term/Admin Probation: After _____ of probation is completed, all conditions completed (costs, fees, restitution, no violations), probation shall be _____ automatically terminated/ _____ changed to administrative probation.
___ Employment: Defendant will make a good faith effort to be full-time employed and probation to assist. If not employed, you shall report Monday thru Saturday to the Labor Pool at 5:00 AM until employed. Probation to verify.
___ P.R.C.: You are placed on community control for 1 year. You shall reside at __ jail __ home until a bed becomes available at P.R.C.. You shall be at P.R.C. until discharged or 1 year, whichever is sooner. Upon release you are on probation for ____ months. At P.R.C. net income will first pay room and board, $35 pocket money, then 50% for child support of _____, then remaining money first to restitution, and then court costs, fines and fees.

10. MONETARY OBLIGATIONS: If ON PROBATION YOU ARE to make payments to Probation. If you are NOT ON PROBATION then pay Clerk of Court. Either way you will pay the sums and in the manner herein directed.

___ Restitution: $_____ total, to be paid $_____ monthly.

✓ Restitution: Reserved Jurisdiction.

✓ Court Costs: ✓ $170.50 ___$253 ___$258 $_____Court reporter
Cost of Depo $____; Cost of transcript $____; Cost of transport & housing $____;

___ Drug Case Fines: $100.00 FDLE AND $250.00 OCDTF.

___ Fines: $_____

___ Public Defender/Private Attorney Lien: $40___ $250 ___ $350___ $___

✓ Cost of Investigation: $ 270.00 ; Reserved ____.

___ Jail Costs: $75.00 per weekend served.

___ Payments: You will pay $_____, including restitution, on or before 1st/15th day of each month; first payment in _____ days/month(s); if probation, pay cost of supervision, and a 4% surcharge.

___ Final Judgment: Record in public records of Osceola County or _____ County.

... probation

5369

RD TERMS OF PROBATION:

1. You will make a full and truthful report to your Probation Officer on or before the 5th day of each month.
12. You will pay cost of supervision of $20.00/$40.00 or such other sums as determined by Judge; plus a 4% surcharge per month.
13. You will not change your residence, employment, or leave the county of your residence without prior consent of your Probation Officer.
14. You will neither possess, carry or own any weapons or firearms.
15. You will not violate any laws or court orders, including pay support.
16. You will not associate with persons engaged in criminal activity.
17. You will not use intoxicants if prohibited or in excess; or possess any drugs, narcotics, or paraphernalia unless prescribed by a physician. Nor will you visit places where intoxicants, drugs, or other dangerous substances are unlawfully sold, dispensed, or used.
18. You will make a good faith effort to be employed.
19. You will truthfully answer all questions directed to you by the Probation Officer, and allow them to visit your home, employment, or elsewhere. You will comply with all instructions he may give you.
20. You will pay restitution, costs, and fees as order herein.
21. You will submit to chemical tests (breath, urine and blood) upon request of your Probation Officer; and submit to search of your residence, person, or vehicle for the presence of controlled substance, weapons, firearms, and alcoholic beverages if prohibited.

STANDARD CONDITIONS OF COMMUNITY CONTROL:

22. You shall report once a week, or, as directed.
23. You will remain confined to your approved residence except for one half hour before and after your approved employment, public service work or any other special activities approved by your Officer.
24. You will maintain an hourly accounting of all your activities on a daily log which you will submit to your Officer upon request.
25. Pursuant to F.S. 948.03, your Officer may place you on electronic monitoring. You will maintain a private phone line at your residence and you will be financially responsible for any lost or damaged equipment. If placed on monitor you will pay monthly $30.00.

. The Court reserves the right to rescind, modify or revoke probation to the extent provided by law.

I have received a copy of the terms and conditions of my probation/community control. I have read and understand these conditions. Also, I hereby consent to the disclosure of my alcohol and drug abuse patient records, the confidentiality of which is federally regulated under 42CFR, part II, for the duration of my supervision.

Defendant	Date	Probationer/Community Controlee

COUNT	CRIME	OFFENSE STATUTE NUMBER(S)	DEGREE OF CRIME
Ct 1	(110) Attempt to Fraud use C. Card	777.04(1)	M1
Ct 2	(110) Conspiracy commit to grand Theft 3rd degree	777.04(3)	M1

5370

FINGERPRINTS OF DEFENDANT

RIGHT THUMB	RIGHT INDEX	RIGHT MIDDLE	RIGHT RING	RIGHT LITTLE
				
LEFT THUMB	**LEFT INDEX**	**LEFT MIDDLE**	**LEFT RING**	**LEFT LITTLE**
				

Fingerprints taken by: Name: DARYL G. BASS Title: DEPUTY SHERIFF

DONE AND ORDERED at Osceola County, Florida, this 12TH day of March 1998.
I HEREBY CERTIFY that the above and foregoing fingerprints are the fingerprints of the Defendant, *NAME(L) YELENA BATKILINA and that they were placed thereon by said Defendant in my presence in Open Court this date.

JUDGE

Filed in Open Court this 12
Day of March, 1998
Harry Whaley, Clerk of Court
By: DCT D.C.

___ ASA	___ Civil	___ Orl. Sentinel
___ Defense	___ Jail Detail	___ Osc. Gazette
___ SO/Jail	X Bond Clerk	___ Surety
___ Defendant	___ Bookkeeper	___ Bookkeeper(K)
___ Probation	___ Other _____	

cr-sent

5371

IN THE CIRCUIT COURT IN AND FOR OSCEOLA COUNTY, FLORIDA
CASE NO. CR97-1441

E OF FLORIDA

vs

XXX Court Minutes (Motion Hearing)
XXX Order

Velena Batklina

Charged with: Ct1 Attempt to Fraud use credit card
Ct2 Conspiracy to committ grand theft 3rd degree

Judge ANTHONY H. JOHNSON Defense Attorney Greene
Asst. State Attorney: NE/DG/SD/CO/MS Court Reporter: LK/BJ/JC/SF/JA
DEPUTYS: HUGHES/TEEL

This case came on this date for: motion to terminate probation

The defendant was __ present ✓ not present __ present with counsel

State Witnesses Sworn and Testified:

State's Evidence:

Defense Witnesses Sworn and Testified:

Defense's Evidence:

Court Witnesses Sworn and Testified:

Court's Evidence:

___The Court took under advisement; defered ruling.

✓ RULING: motion granted

___Other:

DONE AND ORDERED this 1 day of Feb, 1999.

Filed in Open Court this 1
of Feb, 1999
LARRY WHALEY, Clerk of Court

By _____ OT/AD _____ D.C.

Circuit Judge

DISTRIBUTION

✓ S.A.
___ DEFENSE
___ S.O./JAIL
✓ Defendant
___ SURETY
___ OTHER
___ P & P

cr-mot1

ase No. . . . : 1-97-004297
t Class . . : FRAUD, OTHER Report Date . : 5/23/97 16:22
Occur From Date: 4/22/97 12:00 Occur To Date : 4/30/97 12:00
Day Of Week . : FRIDAY
Location Information
Location Type : SPECIALTY STORE
Common Name . : A&A AUTO RENTAL, 1001 DYER BLV
City . . . . . : KISSIMMEE, FL
County . . . . : OSCEOLA Map Reference : 127
Beat Assignment: ZONE 5 Drug Related? : NO
Case Status . : ARREST WARRANT ISSUED Alcohol Related: NO
Case Status Dt : 7/10/97
Employee Information
Report Officer : HEHMAN, EILEEN
Supervisory Emp: SHEPARD, WARREN 5/24/97
Entry Date . . : 5/29/97

********** A D D I T I O N A L T I M E S **********
Date Dispatched: 5/23/97 16:52 Date Arrived . : 5/23/97 17:18
Date Cleared . : 5/23/97 17:31

********** C A S E M A N A G E M E N T I N F O R M A T I O N **********
Case Management Details
Dept Class . . : FRAUD, OTHER Case Status . : ARREST WARRANT ISSUED
Case Status Dt : 7/10/97 Forwarded To . : CRIMINAL INVESTIGATION
Investigator . : FISHER, T.

ASSIGNMENT HISTORY
Dept Unit . . : CRIMINAL INVESTIGATIONS
Investigator . : FISHER, TIMOTHY Supervisor . . : DONZELLI, MICHAEL
Assignment Date: 5/27/97

********** O F F E N S E R E P O R T # 1 **********
State Class . : FRAUD-CREDIT CARD/ATM Attmpt/Committ : COMMITTED
Statute/Ordin : 817.481 ( )_260B_OBTAIN GOODS BY
Computer Theft : NO Attack Reason : N/A
Evid Collected : NO Crim Activity : NOT APPLICABLE
State Dispo . : SUSPECT KNOWN
UCR Disposition: ARREST WARRANT ISSUED (ADLT OR JUV)
Dispo Date . . : 7/10/97 Arrest Case No.: 1-97-004297
People Arrested: 1

********* O F F E N S E P R I M A R Y R E L A T I O N S H I P S **********
Offense #: 001 FRAUD-CREDIT CARD/ATM / / 817.481 ( )_260B_OBTAIN GOODS B
Name #...: 001 (SUSP) BATKILINA, YELENA
Name #...: 001 (VICT) POCHOSKI, ANGELA
Name #...: 002 (VICT) HUNT, JOHN P.

********** N A M E P R I M A R Y R E L A T I O N S H I P S **********

Name #...: 001 (VICT) POCHOSKI, ANGELA
Name #...: 001 (SUSP) BATKILINA, YELENA / UNDETERMINED
Name #...: 002 (VICT) HUNT, JOHN P. / STRANGER

07:37 06/11/98 02740
07:37 06/11/98 01813 SC018013A
*OPHKMJFOK4
TXT
HDR/2LO1OPHKMJFOK4310 2D
ATN/BELL, KRIS
THE FOLLOWING RECORD PERTAINS TO SID/PA25240332

SP4-137B

PENNSYLVANIA STATE POLICE CENTRAL REPOSITORY
1800 ELMERTON AVENUE HARRISBURG, PENNSYLVANIA 17110 717-787-9092

ATTN: BELL, KRIS ORI: SC018013A

USE OF THE FOLLOWING CRIMINAL HISTORY RECORD FOR *** SID/252-40-33-2 ***
REGULATED BY ACT 47, AS AMENDED. *** III - SINGLE STATE OFFENDER ***

[redacted] SEX: F RAC: W [redacted] FBI: 961658FB2

NAME: BATKLINA,YELENA OTN: FO51398-4
ARRESTED: 01/15/1998 PA0462100-PLYMOUTH TWP PD OCA: 4457
DISPOSITION DATE: 01/22/1998 DISTRICT JUSTICE: 38113

05/11/1997 CC3932A ~~THEFT OF LEASED PROPERTY~~ ~~NOLLE PROSSED/WITHDRAWN~~

++

F = FELONY, M = MISDEMEANOR, S = ~~SUMMARY~~ AND THE NUMERIC = THE DEGREE.

THIS RESPONSE IS BASED ON REQUESTER FURNISHED INFORMATION AND INCLUDES FINGERPRINT SUPPORTED DATA EXCLUSIVELY FROM THE FILES OF THE PENNSYLVANIA STATE POLICE REPOSITORY. IT DOES NOT PRECLUDE THE EXISTENCE OF OTHER CRIMINAL RECORDS CONTAINED IN THE REPOSITORIES OF OTHER LOCAL, STATE OR FEDERAL CRIMINAL JUSTICE AGENCIES.

END OF RECORD FOR SID 252-40-33-2

IN JUN 11, 1998 10:34:29 000221167076/298
OUT JUN 11, 1998 10:34:31 MSG# 2373 SAN: 8FO38JFOK4WP

Applicant's EXHIBIT #7

...ND TO DISSEMINATE USING FBI/961658FB2
FOR CRIMINAL JUSTICE PURPOSES

...QUIRY FORWARDED TO INTERSTATE IDENTIFICATION INDEX

...S C CJICS END OF RECORD **

IN JUN 11, 1998 10:33:37 000221015312/298
OUT JUN 11, 1998 10:33:37 MSG# 2371 SAN: OPHKMJFOK431

TO: DORSL1
FROM: NCIC2

...1OPHKMJFOK43102D
SC018013A
THIS INTERSTATE IDENTIFICATION INDEX RESPONSE IS THE RESULT OF YOUR RECORD REQUEST FOR FBI/961658FB2. THE FOLLOWING WILL RESPOND TO YOUR AGENCY:
PENNSYLVANIA - STATE ID/PA25240332

END

IN JUN 11, 1998 10:33:49 000221045214/298
OUT JUN 11, 1998 10:33:49 MSG# 2372 SAN: OPHKMJFOK431

TO: DORSL1
FROM: NLET

5375

E DEPARTMENT
NCIDENT REPORT

PREMIER CAR RENTAL
[redacted] S. Woodbourne Rd., Levittown, PA 19057

NO. COPIES	AREA	UNIT NO.
1	2	39

[redacted] RIDGE PK.
CONSHOHOCKEN, PA 19428
8. BUSINESS PH: 834 91[redacted]

AGE | 7. SEX | RACE | DATE OF BIRTH | 8. HEIGHT | 9. WEIGHT [redacted]
N/A

11. TAG NO. [redacted] STATE YEAR PA
13. YR 97 | 14. MAKE CHEVY | 15. MODEL BLAZER | 16. STYLE 4DR. SDN. | 17. COLOR WHITE

18. INCIDENT DATE 05/07/97 TIME 1445 TO DATE 06/11/97 TIME 1800 | 19.
20. INCIDENT OR OFFENSE THEFT OF LEASED PROPERTY | 21. DEPT. REF. | COI
22. INCIDENT LOCATION PREMIER CAR RENTAL | 23. UCR CODE 0660

IS THERE A CASE FOLDER? NO - YES (circle one) DATE

IF YES, DESCRIBE IN NARRATIVE OR APPROPRIATE SECTION BELOW.	YES	NO/UNK
WAS ARREST MADE? HOW MANY? ( )		
WAS THERE A WITNESS TO THE CRIME?	X	
CAN A SUSPECT BE NAMED?	X	
CAN A SUSPECT BE LOCATED?		X
CAN A SUSPECT BE DESCRIBED?	X	
CAN A SUSPECT BE IDENTIFIED?	X	
IS THE STOLEN PROPERTY TRACEABLE?	X	
IS PHYSICAL EVIDENCE PRESENT?	X	
IS A SIGNIFICANT M. O. PRESENT?	X	
HAS EVIDENCE TECH BEEN CALLED?	X	

WEATHER (circle letter) a. CLEAR b. CLOUDY c. RAIN d. FOG e. SNOW-SLEET f. HAIL g. UNKNOWN

DEPT. REF. [redacted]

Press Release YES ☐ NO ☒

ADDRESS CHECKED OR

B. EVENT

1. POINT OF ENTRY N/A | 2. LOCATION OF VICTIMS PROPERTY → | 3. VICTIMS CONDITION (circle letter) a. SOBER b. DRUNK c. HAD BEEN DRINKING

4. REPORTING PERSON'S NAME (Last, First, Middle) STEIN, DAVID, L. W/M 3/4/68 | 5. SOCIAL SECURITY NO. [redacted] | 11. PREMISE TYPE (circle letter) a. HWY-STR-ALY b. COMMERCIAL c. SVC. STATION d. CHAIN STR. e. BANK f. SCHOOL

6. ADDRESS [redacted] RIDGE PK. CONSH. PA. (GENERAL MANAGER) | 7. RES. PHONE [redacted] A-6

9. METHOD USED TO COMMIT CRIME ACTOR RENTED THE VEHICLE BUT FAILED TO RETURN IT. | 10. TOOL USED (BURGLAR

Applicant's EXHIBIT #8

12. WEAPON USED (For crimes against PERSONS ONLY) (circle let.) a. FIREARM b. KNIFE OR CUT. INSTR. c. OTHER WEAPON d. HANDS ETC. | DESCRIPTION OF WEAPO

C. SUSPECT VEHICLE

1. TAG NO. N/A | STATE | YEAR | COLOR(S) | 2. V. I. N. (Do not fill in with ZEROS) | 3. ENTERED NCIC a. YES b. NO NCIC HIT a. POS. b. NEG

4. VEH. YR | 5. VEH. MAKE | 6. VEH. MODEL | 7. VEH. STYLE | 8. VEH. COLOR(S)

D. SUSPECT A

1. NAME (Last, First, Middle) BATKILINA, YELENA (PA. DLN [redacted]) | 2. WARRANT ISSUED POS. NEG. | 3. SEX F | RACE W | 4. DATE OF BIRTH [redacted] AGE

5. ADDRESS [redacted] WELTON ST. PHILA, PA. 19116 | CITY | STATE | 6. COMPLEXION FAIR | 7. HEIGHT 5'03" | WEIGHT 160 | HAIR BRN | EYE Bk

8. DESCRIBE CLOTHING PHONE # [redacted] 38 PG [redacted] 86 | 9. MARKS AND SCARS SS# [redacted]

D. SUSPECT B

1. NAME (Last, First, Middle) BATKILINA, MIKE | 2. WARRANT ISSUED POS. NEG. | 3. SEX M | RACE W | 4. DATE OF BIRTH | AGE

5. ADDRESS [redacted] KNIGHT RD. BENSALEM, PA. 19053 | CITY | STATE | 6. COMPLEXION | 7. HEIGHT | WEIGHT | HAIR | EYES

8. DESCRIBE CLOTHING PARENT'S # [redacted] GRANDMOTHERS HOUSE | 9. MARKS AND SCARS

E. WITNESS

1. NAME (Last, First, Middle)	2. ADDRESS	3. RES. PHONE	4. EMPLOYER	5. BUSINESS PHO
(1) RASIUL, LORIE	N/A →		PREMIER	[redacted]
(2)				

F. NARRATIVE

MR. STEIN REPORTED THE UNAUTHORIZED USE OF A RENTED VEHICLE FROM PREMIER CAR RENTAL. MS. BATKILINA RENTED THE VEHICLE ON 5/7/97 AND WAS SUPPOSE TO RETURN THE VEHICLE ON 5/11/97. MR. STEIN SAID HE TRIED SEVERAL TIMES TO MAKE CONTACT WITH MS. BATKILINA, BUT NEVER RECEIVED A RETURNED RESPONSE.

IS THERE A SIGNIFICANT REASON TO BELIEVE THAT THE CRIME MAY BE SOLVED WITH A REASONABLE AMOUNT OF INVESTIGATION EFFORT? YES ☒ NO ☐

H. ADM.

1. REPORT PREPARED BY [signature] # 120 | 4. CASE STATUS (circle number) 0 OPEN 2. SUSPENDED X. CLOSED | 6. DATE-TIME OF REPORT 06/11/97 18:35

2. DETECTIVE ASSIGNED | 5. CASE DISPOSITION (circle number) 3. CLEARED DEF. UNDER 18 BY ARREST a. POS. b. NEG. 4. EX. CLEARED 5. UNFOUNDED | 7. REVIEWEE NUMBER

3. SUPERVISOR APPROVING [signature] 130 RANK OFC | 8. PAGE NO. 1 of

F. NARRATIVE

ON LOCATION I MADE SEVERAL PHONE CALLS TO THE RENTAL AGREEMENT.

I SPOKE TO YELENA'S SISTER CHRISTINA, SHE ADVISED ME, HER SI WAS DUE HOME FROM CALIFORNIA ON 6/12/97 @ 1530 HRS. CHRISTENA SAID THE BLAZER IS PARKED AT THE AIRPORT.

I ADVISED CHRISTINA TO HAVE YELENA PHONE ME WHEN SHE GETS HOME CHARGES PENDING. VALUE OF VEHICLE $25,000

6/12/97: WARRANT ISSUED FOR THEFT OF LEASED PROPERTY.

6/12/97 AT 1530 HRS. I PHONED THE BATKILINA RESIDENCE AND SPOKE TO MRS. BATKILINA. I ADVISED HER OF THE ARREST WARRANT FOR HER DAUGHTER YELENA. MRS. BATKILINA SAID SHE WOULD HAVE YELENA CALL ME. ALSO, MRS. BATKILINA SAID SHE DOES NOT HAVE A DAUGHTER CHRIS

1. PROPERTY VALUE $25,000

a. CURRENCY	b. JEWELRY	c. CLOTHES-FURS	d. STOLEN VEH.	e. OFFICE EQUIP.	f. TV-RADIO-CAMERA
$ S / $ R	$ S / $ R	$ S / $ R	$ 25,000 S / $ R	$ S / $ R	$ S / $ R

g. FIREARMS	h. HOUSEHOLD GDS.	i. CONSUMABLE GDS.	j. LIVESTOCK	k. MISCELLANEOUS	l. DRUGS
$ S / $ R	R S / $ R	$ S / $ R	$ S / $ R	$ S / $ R	$ S / $ R

H. INJURED or DEAD

1. NAME & ADDRESS OF PERSON REMOVING INJURED OR DEAD

2. HOSPITAL N/A | 3. DATE-TIME OF ARRIVAL | 4. ATTENDING PHYSICIAN

5. EXTENT & LOCATION OF INJURY (DESCRIBE) N/A

6. HOSPITALIZED (circle letter) a. ADMITTED b. TREATED AND DISMISSED

7. NEXT OF KIN NAME | ADDRESS | CITY | STATE | 8. PHONE NO.

9. CORONER NOTIFIED (circle letter) a. POS. b. NEG. | 10. IF POS., GIVE NAME OF CORONER

I. STOLEN/RECOVERED TOW-IN VEHICLE

1. VEHICLE TYPE (circle letter) a. AUTO b. TRUCK c. BUS d. MOTORCYCLE e. OTHER | 2. NCIC CHECK a. POS. b. NEG. | 3. TOWED TO: | 4. CONDITION OF VEH. GOOD

5. DRIVER'S NAME (Before theft/at tow-in) (Last, First, Middle) BATKILINA, YELENA [redacted] PHONE [redacted] | 7. BUSINESS PHONE

8. [redacted] WELTON ST. PHILA, PA. | CITY | STATE | 9. WHO NOTIFIED OWNER? | 10. PHONE NO.

11. INSURING COMPANY (Theft Ins.) N/A | CITY | STATE | 12. WRECKER DRIVER

13. IGNITION LOCKED a. POS. b. NEG. | 14. DOORS LOCKED a. POS. b. NEG. | 15. KEY IN VEHICLE a. POS. b. NEG. | 16. SIGNATURE OF OWNER N/A

17. OWNERSHIP VERIFIED BY: (circle letter) a. TAG RECEIPT b. BILL OF SALE c. LICENSE REGISTRATION d. OTHER

18. VEHICLE LOCATION AT TIME OF THEFT OR PULL-IN (circle letter) a. SHOP/CNTR. b. PRK ON ST. c. PAY PRK LOT d. RES. (OFF ST.) e. CO. PRK LOT f. DEAL/LOT g. OTHER RENTAL OFFICE

K. MISSING PERSON

1. POSSIBLE CAUSE OF ABSENCE | 2. PREVIOUS RUNAWAY - DATES | WHERE LOCATED

3. PROBABLE DESTINATION N/A | 4. PHYSICAL CONDITION | 5. MENTAL CONDITION

6. DESCRIBE ARTICLES OF JEWELRY WORN AND IDENTIFICATION CARRIED N/A | 7. COMMUNICATIONS NOTIFIED DATE TIME

8. DESCRIBE CLOTHING, SUITE, SPORTCOAT, SHIRT, NECKWEAR, TROUSERS, SHOES, OVERCLOTHING, HEADDRESS, DRESS, SWEATER, SKIRT, Etc. ...

9. AGE	10. HEIGHT	11. WEIGHT	12. BUILD	13. HAIR	14. EYES	15. COMPLEXION	16. VISIBLE SCARS/BIRTHMARKS

17. IDENTIFYING MARKS - TATOOS, DENTAL WORK, DEFORMITIES, MALFUNCTIONS - DIABETIC/EPILEPSY, Etc. ...

18. CERTIFICATION BY GUARDIAN:

ST. V. BATKILINA 10-10-97

Lower Merion Police Department P. 1 of 2 C

Year	Date	Day	Sector	Vehicle #	Complaint #
1997	8-21	THURS	62	63	97-04304

Crime or Incident Classification	Code	Time Out	Time In
FRAUD / STOLEN AUTO 1130		1051	1110

Location of Occurrence	In ☒ Out ☐	Date of Occ.	Time of Occ
BURDUNY VOLVO - 2711 PHILMONT		8-21-97	1021

Complainant	Race	Sex	Age	Phone Home	Business
CHARLES BURDUNY	W	M	34	—	947-6363

Address	Injury	Nature of Injury
[redacted] PHILMONT AVE HUNTINGDON VY, PA	☐ Yes ☒ No	—

Description of Incident

COMPLAINANT REPORTS THAT HE ACCEPTED A CHECK FOR PAYMENT OF BELOW VEHICLE. THE CHECK WAS PRESENTED BY A YELENA BATKILINA IN THE AMOUNT OF $33,551.80 FOR PAYMENT ON A 1998 VOLVO S70. COMP. STATES THAT THE CHECK DID NOT CLEAR AND BATKILINA HAS FAILED NUMEROUS TIMES TO PROVIDE ADEQUATE FUNDS TO COVER THE CHECK. THE CHECK HAD AN ADDRESS OF 2500 KNIGHTS RD APT 516 3 BENSALEM, PA 19020 AND WAS DRAWN FROM PRIME BANK IN

Property Description	☒ Stolen ☐ Damaged	Insured	Total Value
1998 VOLVO S70	☒ Stolen ☐ Damaged	☒ Yes ☐ No	33,551.80

VIN YV1LS5530WA440993

PA BLG-10166

WHITE, 4 DOOR

Offender Information

YELENA BATKILINA

[redacted] KNIGHTS RD APT [redacted]

BENSALEM, PA 19020 PH [redacted]34

PA OLN [redacted]

DOB [redacted]

Reporting Officer [redacted] #33 Supervisor/OIC [redacted]

Applicant's EXHIBIT #9

Lower Morela Police Department

P. 2 of 2

Year	Date	Day	Sector	Vehicle #	Complaint #
1997	8-21	Thurs	62	603	97-04304

Crime or Incident Classification	Code	Time Out	Time In
FRAUD / STOLEN AUTO 1130		1051	1110

Location of Occurrence	In ☒ Out ☐	Date of Occ.	Time of Occ.
BURBUNY VOLVO - 2711 PHILMONT		8-21-97	1021

Complainant	Race	Sex	Age	Phone Home	Business
CHARLES BURBUNY	W	M	34	—	[redacted]63

Address	Injury	Nature of Injury
[redacted] PHILMONT AVE HUNTINGDON VLY PA	☐ Yes ☒ No	—

Description of Incident

BATKILINA'S NAME DATED 8-13-97. THE VEHICLE IS CURRENTLY BEING STORED AT [redacted] PENNS PIKE WRIGHTSVILLE, PA 18943, WHICH IS THE RESIDENCE OF BATKILINA'S BOYFRIEND. BURBUNY VOLVO SENT A REPOSSESSOR OUT TO RETRIEVE THE CAR, BUT IT WAS LOCKED IN A GARAGE. VEHICLE ENTERED NCIC.

-TOT DETECTIVES-

Property Description	☐ Stolen ☐ Damaged	Insured ☐ Yes ☐ No	Total Value

Offender Information

Reporting Officer	Supervisor/OIC
Richard Leonard #33	

INVESTIGATION REPORT Sheet 1 of 4 LOWER MORELAND TOWNSHIP POLICE

C#	TYPE OF REPORT			DETECTIVE USE ONLY	SECT
97-04304	☐ Initial ☒ Follow-up ☐ Report to follow ☐ TOT Det.			☒ UCR ☐ UTILITY	2562
DATE	REPORTING OFFICER	CLASSIFICATION	CODE	UCR CLASSIFICATION & CODE	
08/12/97	Richard Lesinski	Fraud	1130	11	

COMPLAINANT	RACE ☐A ☐O ☒W ☐B ☐H	SEX ☒M ☐F	AGE	DOB	HOME PHONE #	BUSINESS PHONE #
Charles Burdumy			34			947-6363

ADDRESS	PLACE OF OCCURRENCE	DATE & TIME OCCURRED
[redacted] Philmont Avenue	Same	08/12/97, 1021 hrs

REPORTED BY	ADDRESS	HOME PHONE #	BUSINESS PHONE #
Same	Same		Same

STATUS OF INVESTIGATION	DATE OF REPORT	TIME OF REPORT
☐ Active ☐ Inactive ☐ Arrest ☒ Cleared by Exception ☐ Unfounded		

STOLEN PROPERTY	STOLEN	RECOVERED		STOLEN	RECOVERED
CURRENCY, NOTES, ETC.	$	$	FIREARMS	$	$
JEWELRY AND PRECIOUS METALS			HOUSEHOLD GOODS		
CLOTHING AND FURS			CONSUMABLE GOODS		
LOCALLY STOLEN MOTOR VEHICLES	$33,000	$33,000	LIVESTOCK		
OFFICE EQUIPMENT			MISCELLANEOUS		
TELEVISIONS, RADIOS, CAMERAS, ETC.			TOTAL	$33,000	$33,000

OCCURRENCES	WEATHER CONDITIONS	INSURED ☐ YES ☐ NO
☐ Inside ☐ Outside		COMPANY AND POLICY NUMBER

ORIGIN AND DETAILS OF COMPLAINT

Complainant reports that he accepted a check from Yelena Batkilina in the amount of $33,551.80 for payment on a 1998 Volvo S70. Complainant states that the check did not clear and Batkilina has failed numerous times to provide adequate funds to cover the check.

INTERVIEWS

Charles Burdumy Sr; owner of Burdumy Motors, [redacted] Philmont Avenue, Huntingdon Valley, PA, 19006; 215-947-6363. Complainant reports that he accepted a check from Yelena Batkilina in the amount of $33,551.80 for payment on a 1998 Volvo S70. Complainant states that the check did not clear and Batkilina has failed numerous times to provide adequate funds to cover the check. The check had an address of [redacted] Knights Road, Apt [redacted] Bensalem, PA, 19020 and was drawn from Prime Bank in Batkilina's name dated 08/13/97. The vehicle is currently being stored at [redacted] Penns Pike, Wrightstown, PA, 18943, which is the residence of Batkilina's boyfriend. Burdumy Volvo sent a repossessor out to retrieve the car, but it was locked in a garage.

Det. Carl A Molt

OFFICER (Type and Sign Name)	SUPERVISOR
Det. Carl A. Molt	Det. Sgt. Kevin Dillon

LOWER MORELAND TOWNSHIP POLICE DEPARTMENT

SUPPLEMENTAL REPORT

☒ INVESTIGATIVE REPORT ☒ UNIFORM CRIME RPT ☐ INCIDENT RPT ☐ FOUND PROPERTY
CONTINUATION OF ☐ DEATH INVESTIGATION ☐ MISSING PERSON RPT
☐ INVESTIGATIVE REPORT

1 COMPLAINT NO	2 NATURE	3 CODE	4 NAME LAST FIRST MI
97-04304	1130 Fraud	11	Burdumy, Charles

5 NARRATIVE

Michael DeAngelo; AKA Michael O'Neil; AKA Beyen Alexei. Det. Sgt. Dillon and Det. Molt went to Burdumy Volvo and met with Charles Burdumy Sr. Burdumy Volvo furnished the Detectives with the paper work that was filled out by Burdumy and signed by Yelena Batkilina.

Det. Molt called the phone number [redacted]34 which was given by Yelena and the male that was with her. Burdumy only had the first name of the male which he gave as Michael.

When Det. Molt called the [redacted]34 number a male answered the phone by saying State Wide Investigations. The male identified himself to Det. Molt as Michael O'Neil, DOB [redacted] While Det. Molt had Michael on the phone a check was made on a possible drivers license for Michael and no records was found.

They spoke about the purchase of the vehicle and the whereabouts of the Volvo and Yelena (Ellen) Batkilina. Michael said the Volvo was in a garage in Wrightstown at [redacted] Penns Park and he said that Ellen (Yelena) Batkilina lived at [redacted] Penns Park.

Michael said that he would bring the car into Burdumy Motors on Friday morning, 08/22/97 at 0800 hrs. Det. Molt told Michael that if the vehicle was returned by 2000 hrs on 08/21/97 neither he or Yelena would be arrested for theft of the vehicle or for issuing a bad check.

Michael said he was in Delaware and could not get the car there on time, but he would try and locate Batkilina and that Det. Molt should call him back in a short period of time.

Bell Telephone was called to see if there was a phone listing for the last name of Batkilina. There was a listing for Galina Batkilina at [redacted] Welton Road, Philadelphia, PA.

Det. Carl A Molt

6 REPORTING OFFICER	7 ID NO	8 RPT DATE	9 SUPERVISOR	10 ID NO	11 CONTINUED ☐ ON ADDITIONAL SHEETS
Carl A. Molt	Det	08/28/97	Kevin Dillon	DetSgt	ct

5381

LOWER MORELAND TOWNSHIP POLICE DEPARTMENT

SUPPLEMENTAL REPORT

☒ INVESTIGATIVE REPORT ☐ UNIFORM CRIME RPT ☐ INCIDENT RPT ☐ FOUND PROPERTY
CONTINUATION OF ☐ DEATH INVESTIGATION ☐ MISSING PERSON RPT
☐ INVESTIGATIVE REPORT

1 COMPLAINT NO	2 NATURE	3 CODE	4 NAME LAST FIRST MI
97-04304	1130 Fraud	11	Burdumy, Charles

5 NARRATIVE

While Det. Molt and Det. Sgt. Dillon were at Burdumy Motors one of the salesmen said that they recognized a female who had come in with Michael and Yelena when they purchased the Volvo. This girl's first name was Paulina, whose phone number was [redacted]40.

An address of [redacted] E. Centennial Square, Philadelphia, PA was found for Paulina Polishuk, DOB [redacted] Molt and Dillon spoke with Polishuk. Paulina agreed to try and get in touch with Ellen.

After speaking to Paulina, Molt and Dillon went to [redacted] Welton Street, Philadelphia, PA, which is Ellen Batkilina's parents home.

<u>Galina Batkilina: [redacted] Welton Road, Philadelphia, P[redacted]38.</u> Det. Molt and Det. Sgt. Dillon spoke to Galina Batkilina, Ellen's mother. Galina Batkilina had not seen Ellen for several weeks but had spoken to her on the phone. She told Molt and Dillon that the U.S. Marshal's had been to her home looking for Ellen and Michael several months ago. Yelena Batkilina is wanted for theft of a rental card in Florida and Plymouth Township, Montgomery County, PA.

Det. Kathy Colfer and Det. Gregory Laszco of the Philadelphia Police Department are working with the Federal Fugitive Task Force and were the ones looking for Michael and Ellen. (Task Force #215-597-3895)

Galina Batkilina allowed Det. Sgt. Dillon and Det. Molt to look in Yelena's bedroom. A shoe box was found under the bed which contained documents from the Lower Southampton Police Department and Bucks County Court House for a Michael DeAngelo, DOB [redacted] Galina said she helped bail Michael out of Bucks County Prison in December, 1996 and he is the male who is with her daughter.

While Molt and Dillon were at the Batkilina residence, Yelena called and spoke with her mother and Det. Molt. Molt told her that he would not prosecute her if she returned the Volvo by 2000 hrs on 08/21/97.

Det. Carl A. Molt

7 REPORTING OFFICER	7 NO	8 RPT DATE	9 SUPERVISOR	10 NO	11 CONTINUED ☐ ON ADDITIONAL SHEETS
Carl A. Molt	Det	08/28/97	Kevin Dillon	Det Sgt	ct

P.07 8888-799-609

LOWER MORELAND TOWNSHIP POLICE DEPARTMENT

SUPPLEMENTAL REPORT

■ INVESTIGATIVE REPORT ■ UNIFORM CRIME RPT ☐ INCIDENT RPT ☐ FOUND PROPERTY
CONTINUATION OF ☐ DEATH INVESTIGATION ☐ MISSING PERSON RPT
☐ INVESTIGATIVE REPORT

1 COMPLAINT NO	2 NATURE	3 CODE	4 NAME (LAST FIRST MI)
97-04304	1130 Fraud	11	Burdumy, Charles

5 NARRATIVE

At approximately 2005 hrs on 08/21/97 Det. Small was waiting at Burdumy Volvo for the vehicle to be returned and to take Yelena and/or DeAngelo into custody on the outstanding warrants. Galina Batkilina came to the dealership with the Volvo and turned it over to a Burdumy Volvo representative and Det. Rick Small

ADDITIONAL INFORMATION

Paulina Polishuk said that Yelena and Michael move from hotel to hotel. The last one she knew they were in was the Knights Inn on Street Road or Route 1. Yelena usually registers under her real name.

The day they picked up the Volvo they were driving a new Cadillac. Polishuk said they returned the Cadillac to a dealership in New Jersey.

It is possible that Michael's first name may be Alex and they may have an attorney in Queens, New York by the name of Donald Schechter, [redacted]50.

Det. Molt contacted Det. Gregory Laszco and gave him the information which had been developed. Laszco believes that AKA Michael DeAngelo may be wanted by the Bucks County Sheriff's as well.

CASE STATUS

Closed; cleared by exception.

Det. Carl A. Molt

7 REPORTING OFFICER	7 NO	8 RPT DATE	9 SUPERVISOR	9 NO	10 CONTINUED ☐ ON ADDITIONAL SHEETS
Carl A. Molt	Det	08/28/97	Kevin Dillon	Det Sgt	ct

BANK A.P.A. Philadelphia PA 19101-3862 ADVICE NO. 3630 DATE 08/18/97

[illegible] MOTORS INC
[illegible] PHILMONT AVE
HUNTINGDON VALLEY PA 19006-5303

FR/ABA

VERIFIED BY

THIS RETURN ITEM NOTICE MAY RESULT IN A SERVICE FEE BEING CHARGED AGAINST YOUR ACCOUNT. FOR INQUIRIES, PLEASE CALL OUR CUSTOMER SERVICE NUMBER: 1-215-973-1000. THANK YOU.

The enclosed checks have been returned unpaid

ACCOUNT CHARGED	ITEM COUNT	TOTAL
0071-9[illegible]	1	$33,551.80

When inquiring, report dollar amount, reference number and advise number.

REFERENCE NUMBER	AMOUNT	REFERENCE NUMBER	AMOUNT
0610-[illegible]-[illegible]	$33,551.80		

Bounced Check returned to original P/C Batkilina

THESE DEPOSITED ITEMS WERE RETURNED UNPAID AND HAVE BEEN CHARGED BACK TO YOUR ACCOUNT. PLEASE REQUEST TO YOUR ACCOUNT USE OF THESE FUNDS

60022 11/90

A CoreStates Bank

Applicant's EXHIBIT #10

RE Yelena Batkilina

5383

5384

BANK N.A. Philadelphia PA 19101-3862 ADVICE NO. 2116 DATE 08/21/97

BURDUMY MOTORS INC
[redacted] PILMONT AVE
HUNTINGDON VALLEY PA 19006-5203

FR/ABA

VERIFIED BY

THIS RETURN ITEM NOTICE MAY RESULT IN A SERVICE FEE BEING CHARGED AGAINST YOUR ACCOUNT. FOR INQUIRIES, PLEASE CALL OUR CUSTOMER SERVICE NUMBER: 1-215-973-1000. THANK YOU.

The enclosed checks have been returned unpaid

ACCOUNT CHARGED	ITEM COUNT	TOTAL
0071-9088	1	$33,551.80

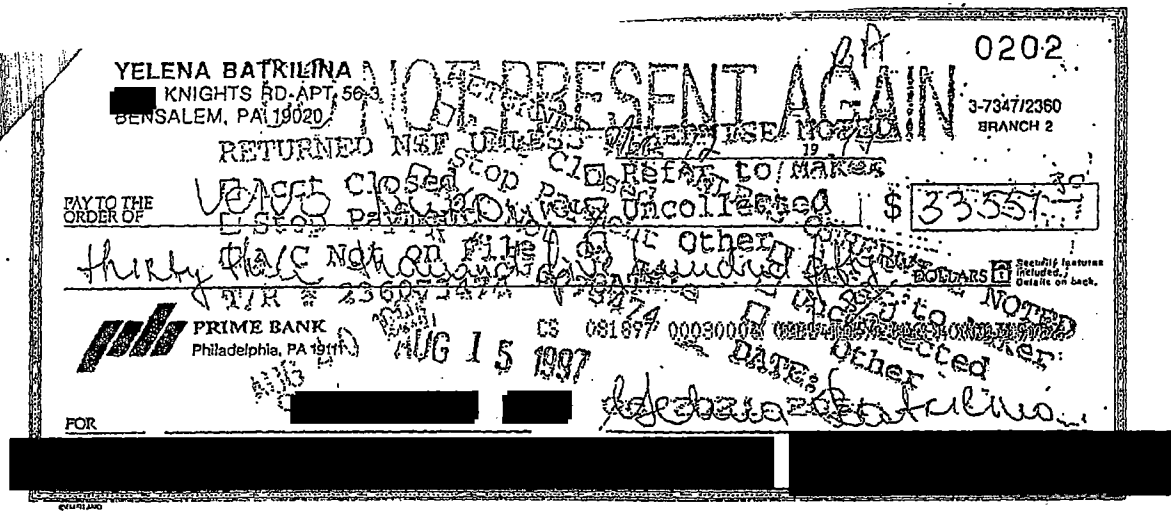
When inquiring, report dollar amount, reference number and advise number.

REFERENCE NUMBER	AMOUNT	REFERENCE NUMBER	AMOUNT
C821-CC083-C497	$33,551.80		

Void P/C Batkilwa

60022 11/90

A CoreStates Bank



YELENA BATRILINA
[redacted] KNIGHTS RD-APT 503
BENSALEM, PA 19020

0202

NOT PRESENT AGAIN

3-7347/2360
BRANCH 2

RETURNED NSF UNLESS OTHERWISE NOTED
19

Closed Stop Pay Refer to Maker
Voided Closed Stop Pay Uncollected

PAY TO THE ORDER OF

$ 33557

Stop Payment Order Other

thirty five hundred fifty seven and 00/100 DOLLARS

Security features included. Details on back.

T/R # 236073474

PRIME BANK
Philadelphia, PA 19111

CS 081877 0003000

Uncollected Other

AUG 15 1997

DATE

FOR [redacted]

[redacted]

0385

5387

[redacted] Philmont Avenue
HUNTINGDON VALLEY, PA 19006
947-6363

No 01

PURCHASER'S NAME [redacted] DATE 19

STREET ADDRESS [redacted] CITY [redacted] STATE PA ZIP [redacted]

BUSINESS PHONE [redacted] RESIDENCE PHONE [redacted] SOC. SEC. # [redacted]

REFERRED BY ☐ NEWSPAPER ☐ YELLOW PAGES ☐ OTHER ☐ RADIO ☐ OUTDOOR ADV. ☐ T. V. ☐ CUST. REF.

PLEASE ENTER MY ORDER FOR ONE ☒ NEW ☐ USED ☐ CAR ☐ TRUCK AS FOLLO

YEAR	MAKE	MODEL OR SERIAL	RADIO CODE	COLOR	KEY NO. IGN. DOOR	STOCK NUMBER

MVI OR SERIAL NO. [redacted] ODOMETER MILEAGE [redacted] TO BE DELIVERED ON OR ABOUT 19

USED CAR TRADE-IN AND/OR OTHER CREDITS

MAKE OF TRADE-IN		MILEAGE
YEAR	MODEL	BODY
MVI OR SERIAL NO.		
TITLE NO. OF TRADE-IN		
USED TRADE-IN ALLOWANCE		$
BALANCE OWED ON TRADE-IN		$
NET ALLOWANCE FOR TRADE-IN	*	$
PAID TO:		

BURDUMY MOTORS, INC. RESERVES THE OPTION TO REAPPRAISE THE VEHICLE TRADED ON THIS SALE IF DELIVERY IS NOT CONSUMATED 30 DAYS FROM THIS ORDER BASED ON MARKET VALUE, CONDITION, AND MILEAGE.

Customer's Signature _____

"AS IS"

THE MOTOR VEHICLE IS SOLD "AS IS" WITHOUT ANY WARRANTY EITHER EXPRESS OR IMPLIED. THE PURCHASER WILL BEAR THE ENTIRE EXPENSE OF REPAIRING OR CORRECTING ANY DEFECTS THAT PRESENTLY EXIST OR THAT MAY OCCUR IN THE VEHICLE.

CUSTOMER SIGNATURE X

CONTRACTUAL DISCLOSURE STATEMENT FOR USED VEHICLE ONLY

"The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale."

INS. POL. NO.	CODE	INS. CO.

CASH DELIVERED PRICE OF UNIT	$	[redacted]
DISCOUNT		[redacted]
CASH SALE PRICE OF DESCRIBED VEHICLE	$	[redacted]
DOCUMENTARY FEE		40 00
SERVICE CONTRACT		
TOTAL CASH PRICE		31595 00
NET ALLOWANCE FOR TRADE-IN *		
BALANCE DUE		
SALES TAX		[redacted]
LUXURY TAX		
PA. TIRE TAX		5 00
LICENSE, TITLE, REGISTRATION, ENCUMBRANCE FEE		
TOTAL CASH DUE	$	[redacted]
DEPOSIT PAID ■		
CASH DUE AT DELIVERY	$	[redacted]
BALANCE FINANCED	$	
	$	

THE CONTRACT PRICE OF THE MOTOR VEHICLE CANNOT BE INCREASED AFTER THIS CONTRACT HAS BEEN ACCEPTED BY THE DEALER OR THE AUTHORIZED DEALER REPRESENTATIVE UNLESS THE INCREASE IS DUE TO THE PASSAGE OF A LAW OR REGULATION OF THE UNITED STATES OR THE COMMONWEALTH WHICH: REQUIRES ADDITION OF NEW EQUIPMENT TO CERTAIN VEHICLES: CHANGES IN TRANSPORTATION OR EXISTING TAX RATES; OR, IN THE CASE OF FOREIGN MADE VEHICLES, IS DUE TO A RE-EVALUATION OF THE UNITED STATES DOLLAR vis-a-vis THE CURRENCY OF THE COUNTRY OF MANUFACTURE, OR IN THE EVENT OF THE MANUFACTURER PRICE INCREASE FOR WHATEVER REASON.

THIS CONTRACT IS NOT BINDING UPON EITHER THE DEALER OR THE PURCHASER UNTIL SIGNED BY AN AUTHORIZED DEALER REPRESENTATIVE. YOU, THE BUYER MAY CANCEL THIS CONTRACT AND RECEIVE A FULL REFUND ANY TIME BEFORE RECEIPT OF A COPY OF THIS CONTRACT SIGNED BY AN AUTHORIZED DEALER REPRESENTATIVE BY GIVING WRITTEN NOTICE OF CANCELLATION TO THE DEALER.

Purchaser shall have a right to examine the subject automobile to determine whether there is any material breach of an express warranty of the manufacturer, and if [redacted]rchaser may rescind the contract in accordance with law upon giving Vendor notice thereof within 24 hours from the time Purchaser obtains physical possession of the subject automobile. Failing such notification, the subject automobile shall be deemed in law as having been "delivered" upon the expiration of such 24 hour period.

I CERTIFY THAT I AM OF LEGAL AGE OR OLDER AND ACKNOWLEDGE RECEIPT OF A COPY OF THIS CONTRACT.

Signature of Vehicle Purchaser X [redacted] Date 8-12-97

Signature of Authorized Dealer Representative _____ Date 8-12-97

[redacted] MOTORS, INC.
[redacted] Philmont Avenue
HUNTINGDON VALLEY, PA 19006
(215) 947-6363
(215) 947-7361 (Fax)

5388

43839

AMOUNT	PAID BY	COMMENT
33,551.80	CHECK	STOCK 2314 BRANT

[redacted]

Personal check Prime Bank

YELENA BATKILINA
[redacted] Knights Rd - Apt 56-3
Bensalem Pa 19020
4164215

TOTAL RECEIVED: $33,551.80

DATE-TIME: 12AUG97 18:52:39
CASHIER: MARK
LOCATION:
CASH DRAWER:

********** WE APPRECIATE YOUR BUSINESS **********
********** HAVE A GREAT DAY! **********

ACCOUNTING DISTRIBUTION

JOURNAL	ACCOUNT	AMOUNT	CONTROL	CONTROL2
56	2010	33,551.80		
	2100	-33,551.80	4164215	

PAC #~~50~~ #80
Batkilina Aug 25 '97

CASH
RECEIPT
OFFICE COPY

5389

New York State Department of Motor Vehicles

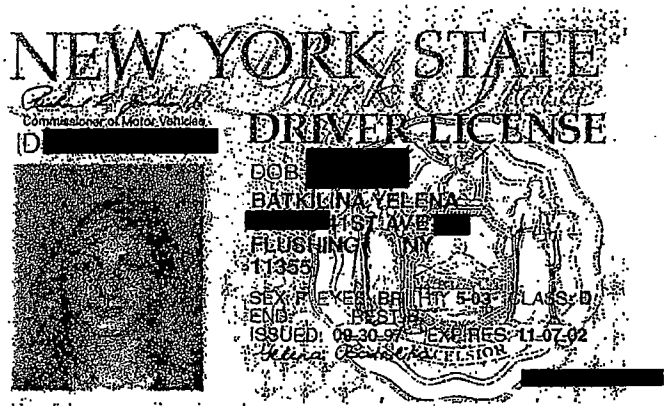
HERE IS YOUR:
PHOTO LICENSE/PERMIT/ID CARD

NEW YORK STATE DMV

BATKILINA,YELENA
[redacted] 41ST AVE APT [redacted]
FLUSHING NY 11355-1867

* New license/ID design
* Renewable by mail
* Higher quality photo
* Tamper-proof design
* Latest scanning features

MV-100R (6/96)



Applicant's EXHIBIT #11

Below is your Record of Convictions. Keep it in a safe place. Give or mail it to the Court or Traffic Violations Bureau, if you are convicte

MV-100R (6/96)

New York State Department of Motor Vehicles

RECORD OF CONVICTIONS

Keep This Record to Present Upon Conviction

Description of Violation/Violation Date/Penalty

CLIENT ID: 520359081[redacted]

BATKILINA,YELENA
[redacted] 41ST AVE [redacted]
FLUSHING NY 11355

RESTRICTION(S)

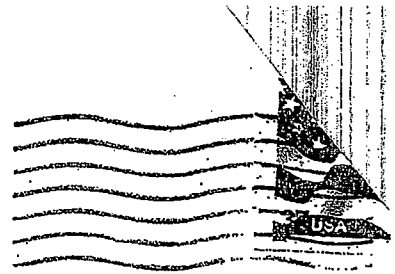
RECORD ALL CONVICTIONS FOR TRAFFIC VIOLATIONS IN NYS WITHIN PAST 18 MONTHS *(EXCEPT PARKING)*.
THE COURT OR CLERK SHALL RECORD ALL FUTURE CONVICTIONS

Date of Violation	Crime, Infraction, Offense	Date of Conviction	Disposition and Fine	Court and Location

THIS PART MUST BE PRESENTED UPON CONVICTION

LAW OFFICES OF JIM BROWN, P.A.
P.O. Box 592
Beaufort, SC 29901-0592





LAW OFFICES OF JIM BROWN, P.A.
P.O. Box 592
Beaufort, SC 29901-0592

29901+0592 06

5390

5391

PHILADELPHIA POLICE DEPARTMENT

COMPLAINT OR INCIDENT REPORT

YEAR	DIST./OCCD.	D.C. NO.	SECT.	DIST.	VEH. NO.	REPORT DATE
96	5	32452	H	5	710	10-26-96

CRIME OR INCIDENT CLASSIFICATION: Aom Dist — CODE: 3803 — TIME OCC'D: 947 A/P — TIME REC'D: 1021 A/P

LOCATION OF OCCURRENCE: [redacted] Witton St — ☐ OCC ☐ OUT — TYPE OF PREM.

DATE OF OCCUR.	DAY CODE	TIME OF OCCUR.	NATURE OF INJURY
10-26-96	6	947 A/P	

COMPLAINANT: Ellen Batailins — AGE: 51 — RACE: W — SEX: F — PHONE (HOME): [redacted]

ADDRESS: [redacted] — PHONE (BUSINESS):

FOUNDED	REPORT TO FOLLOW	UNIT	CODE	DAY CONT NO.
☑ Yes ☐ No	☑ Yes ☐ No ☐ Close Out	1201	64	78571

WITNESS	TRACEABLE PROP.	UNIQUE DESCRIPTION OF OFFENDER	OTHER EVIDENCE
☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No

DESCRIPTION OF INCIDENT (Include Description of Crime Scene if Applicable)

R/c Man w/gun
Above station before she has
with baseball bat right leg.
Lft. unknown the house.

WITNESS	ADDRESS	PHONE NO

OFFENDER INFORMATION: Shahar Hadar W/M 25 [redacted]
age 25 [redacted]

PROPERTY DESCRIPTION (Include Make, Model, Color and Serial No. Where Applicable)	PROP. CODE	INSURED	STOLEN VALUE
		☐ Yes ☐ No	$

NO OWNER - ABUSE.

VEHICLE 1 – OWNER'S NAME	VEHICLE 2 – OWNER'S NAME
VEHICLE 1 – OPERATOR'S NAME	VEHICLE 2 – OPERATOR'S NAME

WANTED/STOLEN MESSAGE SENT (General No. / Date)	DIST./UNIT TERMINAL	RECEIPT NO.	SENT BY

REPORT PREPARED BY	NO.	DIST./UNIT	TOTAL PAGES	PAGE NO.
P Lo [illegible] 220691	3006	5	1	1

REVIEWED BY	NO.	DIST./UNIT	REFERRAL DATE	CENT NO.
[illegible] Fitz	792	5		

PURSUANT TO ACT 155 OF 1992, THE BELOW PERSON ACKNOWLEDGES RECEIPT OF THE NOTIFICATION OF VICTIM SERVICES FORM.

75-48 (Rev. 6/94)

Applicant's EXHIBIT #12

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF ORANGEBURG)	C.A. No. 01-CP-38-628
BAYAN ALEKSEY, #5059)	
)	
Petitioner,)	
v.)	**AFFIDAVIT OF RICKIE PATTIN**
)	
)	
STATE OF SOUTH CAROLINA)	
)	
Defendant.)	
)	
)	

I, Rickie Pattin , being duly sworn, do state:

1. I am currently an employee of Western Union.

2. During the year 1997, I was also employed with Western Union as an Assistant Manager in the Collection and Litigation Department.

3. During my employment, I investigated a fraudulent transaction occurring on October 1, 1997 in the Atlantic City, New Jersey area..

4. In the course of investigating this matter, I discovered the following information:

A Western Union wire transfer was sent to Lisa Watson. The purported sender of this money was Andrew Watson. The amount of this transfer was $7500.00.

Ms. Watson completed a "To Receive" document at the Western Union office in order to receive this transfer. In order to complete the "To Receive" document, Ms. Watson had to provide the sender's name. Also, Ms. Watson provided her driver's license to the Western Union Agent. The Western Union Agent xeroxed this driver's license, corroborating Ms. Watson's identity as the recipient of the transfer. Per Western Union policy, no money is released if a recipient can not or does not provide the correct sender's name and the Money Transfer Control Number on the above-mentioned "To Receive" document.

Subsequent to this transfer, I was informed that Andrew Watson did not authorize the use of his credit card for this transaction. I am in receipt of an audio recording confirming the fraudulent use of Mr. Watson's credit card. I also learned that Andrew Watson was the estranged husband of Lisa Watson.

Applicant's EXHIBIT #13

My office was prepared to criminally prosecute Ms. Watson for this transaction; however, I received notice in August, 1998 that the government did not wish to pursue this matter. Notwithstanding the government's decision to not prosecute this case, I believe Ms. Watson could have been successfully prosecuted for this fraud.

5. I relayed this information, via letter dated January 7, 1998, to SLED agent Ken Mears.

6. I make this statement of my own free will, absent any coercion or duress.

Rickie Pattin

Dated: 10/22, 2002

WESTERN UNION | *Western Union Financial Services*
Money Transfer and Commercial Services
20 Corporate Hills Drive, St. Charles, MO 63301

FAX TRANSMISSION

Date: 10/09/02

To: **Jim Brown**

From: **Rickie Pattin**

Re: **Lisa Watson**

# of Pages to Follow: _____

If there are any problems receiving this fax, please call the St. Charles Accounting Department at (636) 916-8504

Our fax # is (636) 916-8590

Remarks:

This is what I have on the payee Lisa Watson.

Call me so I can explain.

CONFIDENTIALITY NOTE

The information contained in this facsimile message is legally privileged and confidential information and is intended only for use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that the dissemination, distribution, or photocopying of this facsimile is strictly prohibited. If you have received this facsimile in error, please immediately notify us.

Applicant's EXHIBIT #14

5395

WESTERN UNION
A unit of First Data Corp

FAX TRANSMISSION

DATE: August 11, 1998

TO: Philamina Monaco

FAX: 215 686 5897

FROM: Rickie Pattin

NUMBER OF PAGES TO FOLLOW: 8

FAX # (314) 291-1589

If there are any problems receiving this fax, please call me at Bridgeton Accounting, (314) 291-8000 Ext. 6140

REMARKS:

CONFIDENTIALITY NOTE

The information contained in this facsimile message is legally privileged and confidential information and is intended only for use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that the dissemination, distribution, or photocopying of this facsimile is strictly prohibited.

WESTERN UNION
a unit of First Data Corp.

Western Union Financial Services
13022-A Hollenberg Drive
Bridgeton, MO 63044-2450

August 11, 1998

Western Union vs. Andrew and Lisa Watson
File Number 27434256
Total Loss: $7813.00

On 10/1/97 at approximately 15:29:30 PM, Eastern Standard Time Western Union received a telephone call from an individual stating he was Andrew Watson. The caller wanted to send $7500 to his wife Lisa Watson in Atlantic City, NJ. He stated he was calling from his home telephone number, [redacted]39 (a tape recording of the transaction can be provided).

The credit card used on the transaction was a PNC National Bank MasterCard number [redacted]5708. Western Union contacted the cardholder's issuing bank and confirmed the social security number, home address, place of employment, and date of birth recited by the caller. The issuing bank granted authorization and the money was made available to Mr. Lisa Watson.

Mrs. Watson cashed the checks at The Trop World Hotel and Casino located at Iowa and Boardwalk in Atlantic City, NJ at approximately 19:37:07 PM Eastern Standard Time. She used her driver's license as a valid ID. The telephone number of the casino is 609-340-4881.

Mrs. Watson was named in a murder trial of a State trooper at the State Law Enforcement Division in Charleston, South Carolina. The contact person is George Darnell, and his telephone number is 843-554-7396. He can provide you with any additional information needed. The trial date is August 24, 1998, and the suspect's name is Bayon Alexia.

Mrs. Watson assisted the suspect in buying a Ford Mustang from her husband's car dealership. The $7500 was a down payment used to purchase the car, and Mrs. Watson and the suspect took off together.

Included are copies of the drafts signed by Mrs. Watson, the affidavit completed by the cardholder Andrew Watson, and prior documentation sent to the State Law Enforcement Division in South Carolina

Please call me if you have any questions or comments. My telephone number is 1-300-354-0005, option 4, extension [redacted], or call directly at (314) 291-8000, extension [redacted]

Respectfully,

Rickie Pattin
Manager
Credit Card Money Transfer Chargebacks

WESTERN UNION
a unit of First Data Corp.
Western Union Financial Services
13022 A Hollenberg Drive
Bridgeton, MO 63044-2450

January 7, 1998

Ken Mears
C/o S.L.E.D. / Charleston
5290 Rivers Ave.
Suite #202
American Red Cross Building
North Charleston, SC 29406

RE: Western Union vs. Lisa Watson
Total Charges: $7813.00

Ken Mears:

This is the actual recording called in to Western Union on 10/1/97 at approximately 15:29:30 Eastern Standard Time. You identified the voice as the suspect you have in custody. Also submitted are the actual drafts signed by Mrs. Lisa Watson, along with the copy of signed drafts cashed by Mrs. Lisa Watson.

Mrs. Watson cashed the checks at The Trop World Hotel and Casino, Iowa and Boardwalk, in Atlantic City, NJ. Their telephone number is 609-340-4481. The checks were cashed on October 10, 1997 at approximately 19:37:07 PM Eastern Standard Time.

Please call me if you have any questions or comments regarding this case. My telephone number is (314) 291-8000, extension [redacted]. You may also contact Jim Zink at extension 6111.

Respectfully,

Rickie Pattin
Assistant Manager
Collection & Litigation

Cc: Jim Zink
Enclosures

5399

MONEY TRANSFER 10/01/97

[redacted]8971684073OC[redacted]PHILADELPHIA FO-AGENTCCC111111P-AGENTAXX300000

PAYEELISA WATSON SENDERANDREW WATSON
[redacted]739 CCW TDBN PHILADELPHIA PA 15 10-01 1529P EST
[redacted]CCWCPX
1971684073 ATLANTIC CITY NJ Y87
7500.00) RFT (7500.00)
LISA WATSON
WILL CALL
ANDREW\WATSON
OYID=AXX300000 PRIN= 7500.00
MOD
REC=192 2134 BRI 10/01/97 15:29:30 PM
PAY=A14 3524 APAC 10/01/97 19:15:49 PM
CCA=545 2229 BRI 10/01/97 15:44:17 PM
RET=545 2229 BRI 10/01/97 15:31:58 PM
W/C=H29 4638 ATC 10/01/97 15:51:33 PM
RET=192 2134 BRI 10/01/97 15:58:31 PM
W/C=G49 4564 ATC 10/01/97 16:41:40 PM
W/C=123 EFZB 10/01/97 17:09:20 PM
W/C=I43 4792 ATC 10/01/97 18:18:37 PM
RET=A82 3509 APAC 10/01/97 19:05:15 PM
RET=A14 3524 APAC 10/01/97 19:10:04 PM
RET=A14 3524 APAC 10/01/97 19:11:49 PM
RET=A82 3509 APAC 10/01/97 19:13:02 PM
W/C=A14 3524 APAC 10/01/97 19:13:40 PM
RET=A14 3524 APAC 10/01/97 19:16:46 PM
192 2134 BRI CFHFN BFL/[redacted] FAIRWAY CADILLACJENKINTOWN PA MMN ROGOWSKI DI 87
10/01/97 15:29:30P
192 2134 BRI CCBANK1 [redacted] 081662 10/01/97 15:29:30P
192 2134 BRI ADDRESS VERIFICATION RESPONSE CODE: Z 10/01/97 15:29:30P
545 2229 BRI F/D VFD HFNP;BFL [redacted];CCIB VFD NME ADRS BTF 2158506739;XMTD
545 10/01/97 15:44:17P
545 2229 BRI CCDIRECT2 10/01/97 15:44:17P
545 2229 BRI CCBANK1 [redacted] 081662 1 10/01/97 15:44:17P
192 2134 BRI [redacted]03\CASHIER SUPERFRESH 10/01/97 19:15:49P
192 2134 BRI 1\[redacted]PA USA 10/01/97 19:15:49P
192 2134 BRI 1\1\1 10/01/97 19:15:49P
192 2134 BRI 1\1\1 10/01/97 19:15:49P
192 2134 BRI [redacted]SUNSET DR\RICHBORO \PA\18964\USA\1\1\1\1\1 10/01/97 19:15:49P
192 2134 BRI [redacted]32 10/01/97 19:15:49P
(ANDREW\WATSON \3324 LAMAR PL \PHILADELPHIA PA 19154 LISA WATSON \[redacted]0335
708\CS\[redacted]739\192\O\QTED\ 7813.00\\MOD CCC111111\[redacted]739\).

Total $ 7813.00

1-6-97
* Bank confirmed cell phone # as a valid Home #
* Bank also Gave Approval Code

3157048 * ANI IS a cell phone
Address Not Verified "Z" Code
P.N.C.

APT 353 [redacted]

[redacted]68
Kevin Carr [redacted]06
[redacted]78 [redacted]13

1-7-98 spoke with cardholder; advised signature match from prior
license; claims he will speak with wife and call back

STERN UNION
a unit of First Data Corp.

Western Union Financial Services
13022-A Hollenberg Drive
Bridgeton, MO 63044-2490

January 7, 1998

Ken Mears
C/o S.L.E.D. / Charleston
5290 Rivers Ave.
Suite #202
American Red Cross Building
North Charleston, SC 29406

RE: Western Union vs. Lisa Watson
Total Charges: $7813.00

Ken Mears:

This is the actual recording called in to Western Union on 10/1/97 at approximately 15:29:30 Eastern Standard Time. You identified the voice as the suspect you have in custody. Also submitted are the actual drafts signed by Mrs. Lisa Watson, along with the copy of signed drafts cashed by Mrs. Lisa Watson.

Mrs. Watson cashed the checks at The Trop World Hotel and Casino, Iowa and Boardwalk, in Atlantic City, NJ. Their telephone number is 609-340-4481. The checks were cashed on October 10, 1997 at approximately 19:37:07 PM Eastern Standard Time.

Please call me if you have any questions or comments regarding this case. My telephone number is (314) 291-8000, extension [redacted]. You may also contact Jim Zink at extension [redacted].

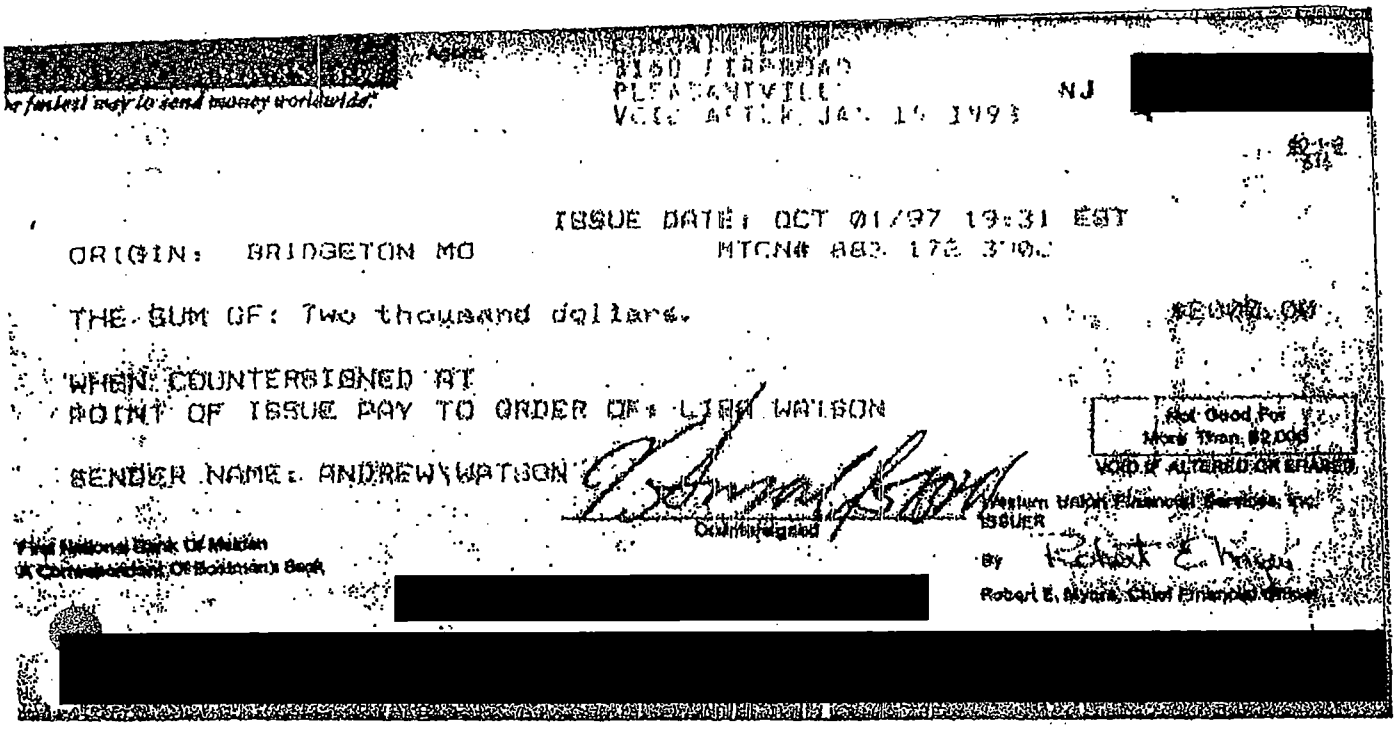
Respectfully,

Rickie Pattin
Assistant Manager
Collection & Litigation

Cc: Jim Zink
Enclosures

Applicant's EXHIBIT #15

BEST COPY AVAILABLE



...fastest way to send money worldwide.

[redacted] Agent
3150 FERRYROAD
PLEASANTVILLE NJ [redacted]
VOID AFTER JAN 1? 1998

ISSUE DATE: OCT 01/97 13:31 EST
ORIGIN: BRIDGETON MD MTCN# 882 172 3?0?

THE SUM OF: Two thousand dollars. $2000.00

WHEN COUNTERSIGNED AT
POINT OF ISSUE PAY TO ORDER OF: LISA WATSON

SENDER NAME: ANDREW WATSON

Not Good For More Than $2,000
VOID IF ALTERED OR ERASED

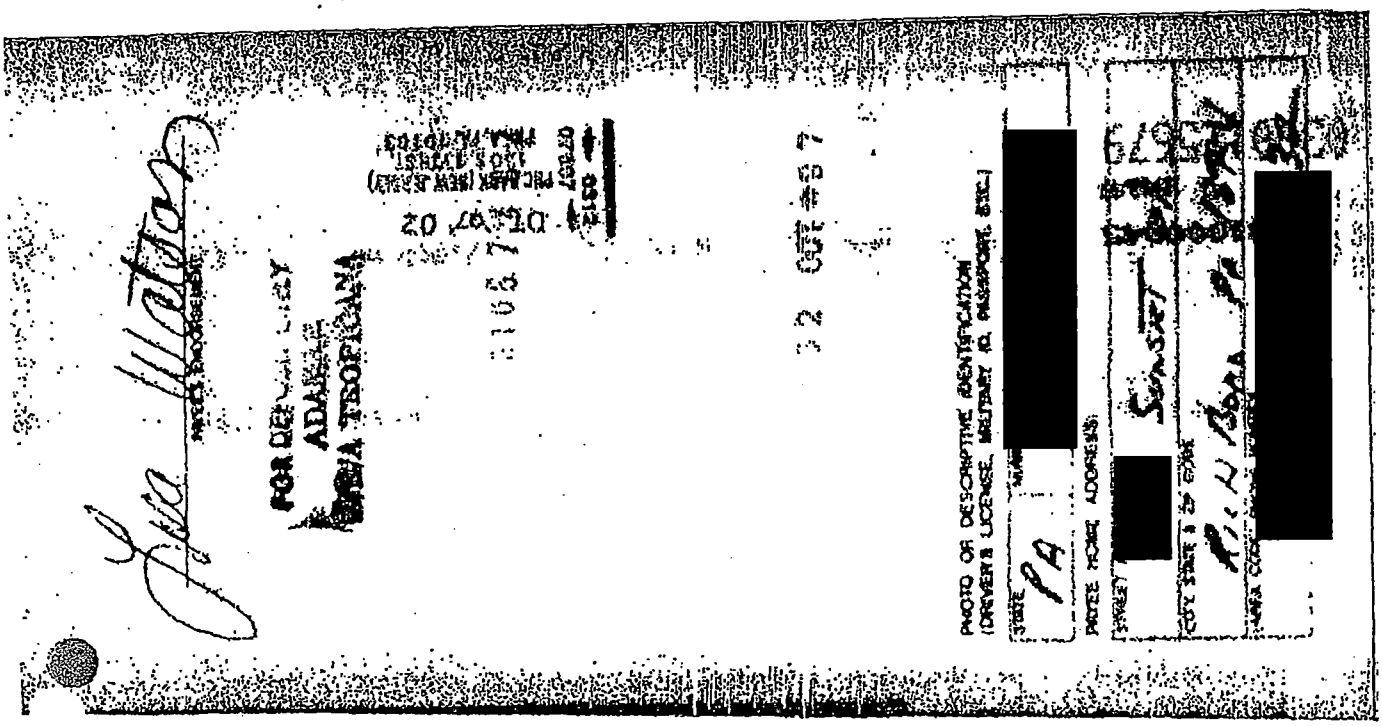
Countersigned

Western Union Financial Services, Inc.
ISSUER
By Robert E. Myers
Robert E. Myers, Chief Financial Officer

First National Bank Of Maxton
A Correspondent Of Bottomley's Bank

[redacted]

[redacted]



Lisa Watson

FOR QUESTIONS CALL
ADAMS
INDIANA TSOFRIANA

PHOTO OR DESCRIPTIVE IDENTIFICATION
(DRIVER'S LICENSE, MILITARY ID, PASSPORT, ETC.)

STATE PA

PAYEE HOME ADDRESS

STREET [redacted] Sunset

CITY STATE ZIP CODE Phila PA [redacted]

BEST COPY AVAILABLE

[redacted] Agent

[redacted]

the fastest way to send money worldwide.

PLEASANTVILLE NJ [redacted]

VOID AFT. 9 10 - 15 1997

ISSUE DATE: OCT 01/97 19:37 EDT

ORIGIN: BRIDGETON MD WTCN# MD3 172 4065

THE SUM OF: Two thousand dollars. $2000.00

WHEN COUNTERSIGNED AT POINT OF ISSUE PAY TO ORDER OF: LISA WATSON

SENDER NAME: ANDREW WATSON

Not Good For More Than $2,000

VOID IF ALTERED OR ERASED

Countersigned

Western Union Financial Services, Inc.
ISSUER

By [redacted]
Robert E. Myers, Chief Financial Officer

First National Bank Of Maxton
A Correspondent Of Bostonian's Bank

[redacted]

[redacted]

PHOTO OR DESCRIPTIVE IDENTIFICATION (DRIVER'S LICENSE, MILITARY ID, PASSPORT, ETC.)

[redacted]

PRINT HOME ADDRESS

[redacted]

[redacted]

BEST COPY AVAILABLE

[redacted]

"fastest way to send money worldwide"

CITICORP [redacted]
[redacted] ROAD
[redacted] NJ
VOID AFTER JAN 16 1998

ISSUE DATE: OCT 01/97 19:41 EST
ORIGIN: BRIDGETON MO MTCN# [redacted]

THE SUM OF: Two thousand dollars.. $2000.00

WHEN COUNTERSIGNED AT
POINT OF ISSUE PAY TO ORDER OF: LISA WATSON

SENDER NAME: ANDREW WATSON

Not Good For More Than $2,000
VOID IF ALTERED OR ERASED

Countersigned

First National Bank of Maxton
A Correspondent Of Baltimore's Bank

Western Union Financial Services, Inc.
ISSUER

By [redacted]
Robert E. Myers, Chief Financial Officer

[redacted]

[redacted]

PAYEE'S ENDORSEMENT

Lisa Watson

02 OCT 97

PHOTO OR DESCRIPTIVE IDENTIFICATION
(OWNER'S LICENSE, MILITARY ID, PASSPORT, ETC.)

STATE PA

PAYEE HOME ADDRESS:

[redacted]

STREET ADDRESS

Sinkert

CITY, STATE & ZIP CODE

[redacted]

AREA CODE PHONE NUMBER

[redacted]

[redacted]

"Fastest way to send money worldwide."

CONSULTEC CORP
3166 FIRENDAS
PLEASANTVILL
VOID AFTER JAN 15 1998

NJ [redacted]

ISSUE DATE: OCT 01/97 10:47 EST
MTCN# 465 17 6703

ORIGIN: BRIDGETON MO

THE SUM OF: One thousand five hundred dollars. $1500.00

WHEN COUNTERSIGNED AT
POINT OF ISSUE PAY TO ORDER OF: LIGO WATSON

SENDER NAME: ANDREW WATSON

Not Good For
More Than $1000
VOID IF ALTERED OR ERASED

First National Bank Of Maldon
A Correspondent Of Baltimore's Bank

Date Countersigned

Western Union Financial Services, Inc.
ISSUER

By Robert E. Myers

Robert E. Myers, Chief Financial Officer

[redacted]

[redacted]

Andrew Watson

PHOTO OR DESCRIPTIVE IDENTIFICATION
(DRIVER'S LICENSE, MILITARY ID, PASSPORT, ETC.)

[redacted]

PAYEE'S SIGNATURE

[redacted]

PAYEE HOME ADDRESS

[redacted]

CITY, STATE, ZIP CODE

[redacted]

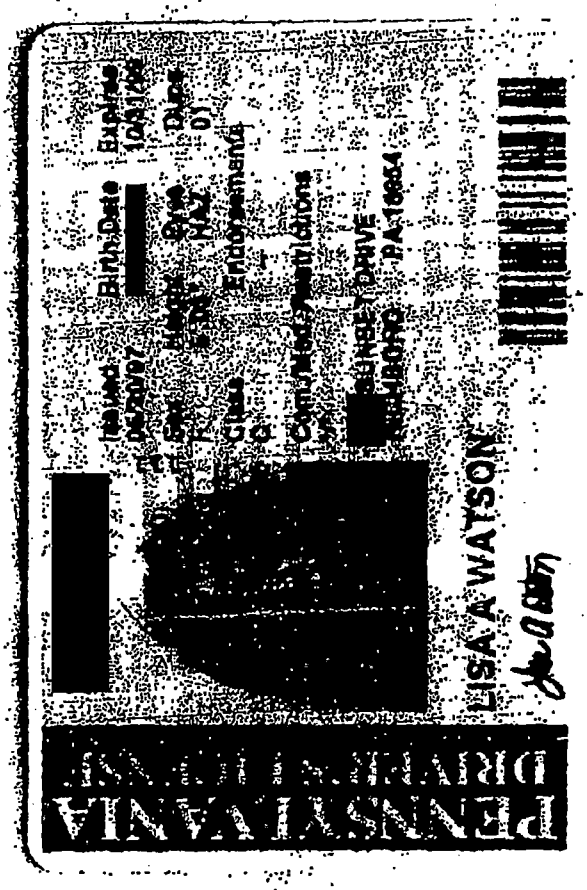
PAYEE'S SOCIAL SECURITY NUMBER

[redacted]

[redacted]

5405

ATTN:
RICKY PATTON



PHILADELPHIA POLICE DEPARTMENT

COMPLAINT OR INCIDENT REPORT

YEAR	DIST./OCC.	D.C. NO.	SECT.	DIST.	UNIT NO.	REPORT DATE
97	8	49056	K	K	08	1/29/97

CRIME OR INCIDENT CLASSIFICATION: Try & Locate | CODE: 3102 | TIME OCC. 2 30 A/P | DIS. BY A/P

LOCATION OF OCCURRENCE: [redacted] Bank St. | ☐ IN ☒ OUT | TYPE OF PREM. 53.

DATE OF OCCUR: 1-28-97 | DAY CODE | TIME OF OCCUR: 3-00 A/P | NATURE OF INJURY

COMPLAINANT: Lis Watson | AGE: 02 | RACE: W | SEX: F | PHONE (HOME): [redacted]

ADDRESS: [redacted] | PHONE (BUSINESS)

FOUNDED: ☐ Yes ☐ No | REPORT TO FOLLOW: ☒ Yes ☐ No ☐ Clear Out | UNIT: 08 | CODE: 08 | INV. CONT NO.

WITNESS	TRACEABLE PROP.	UNIQUE DESCRIPTION OF OFFENDER	OTHER EVIDENCE
☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No

DESCRIPTION OF INCIDENT (Include Description of Crime Scene if Applicable)

Comp Stated She Left before 4pm
to Locate work she has failed
to Locate as of this date.

WITNESS | ADDRESS | PHONE NO.

OFFENDER INFORMATION: Fact Brock 1-28-97 4pm
[redacted]

PROPERTY DESCRIPTION (Include Make, Model, Color and Serial No. Where Applicable)	PROP. CODE	INSURED ☐ Yes ☒ No	STOLEN VALUE
Motor Cust. of Vehicle			
Last [redacted] 60			
Veh. [redacted]			
From Victims Crest Atlantic Ba 4501 C.F. 75 Park			

VEHICLE 1 — OWNER'S NAME | VEHICLE 2 — OWNER'S NAME

VEHICLE 1 — OPERATOR'S NAME | VEHICLE 2 — OPERATOR'S NAME

WANTED/STOLEN MESSAGE SENT	DIST./UNIT TERMINAL	RECEIPT NO.	SENT BY
Control No. 8735 Date 1/29	08	258	7032

REPORT PREPARED BY	NO.	DIST./UNIT	TOTAL PAGES	PAGE NO.
Smith	7032	8		

REVIEWED BY	NO.	DIST./UNIT	REFERRAL DATE	CEN NO.
[illegible]	8830	8		

PURSUANT TO ACT 111 OF 1998, THE BELOW PERSON ACKNOWLEDGES RECEIPT OF THE NOTIFICATION OF VICTIM SERVICES FORM.

75-48 (Rev. 6-96)

#415
1-31-01

Applicant's EXHIBIT #17

5407

LISA WATSON

NO MORE RECORDS TO BE DISPLAYED N GENERAL 2719

***** 106 RECOVERED STOLEN AUTO MESSAGE *****

[redacted]66/ LIS PA VEHICLE SERIAL NUMBER [redacted]

YEAR 97 DISTRICT 08 DC NUMBER 049056

****

RECOVERED AT DORC CO. S. C/
(LOCATION)

DISTRICT OJ SECTOR ON 01/01/98 AT 0555/ A 1998 FORD MUSTA
(DATE) (TIME) (YEAR) (MAKE) (MODEL

WHITE LIS WATSON/ [redacted]
(COLOR) (OWNERS NAME) (OWNERS ADDRESS)

****

PREVIOUSLY REPORTED STOLEN IN THE 08 DISTRICT COMPUTER NUMBER/
111397/ AT 1430/ RECOVERED VALUE [redacted]
(DATE)/ (TIME)/ UCR CODE 0721

SPECIAL INFORMATION THE VEHICLE INVOLVED IN THE SHOOTING OF A POLICE OFFICER N DORC S.C. THE DRIVER APPREHENDED AND THE CAR TOWED TO DAVIS TOWING AT 8038511 855 WITH DAMAGE/

NAME GOSSNER PAYROLL 186397 FORM 75-52 MV

TYPED 75-52 REPORT REQUIRED - ONLY IF ARREST, UNFOUNDED, EXCEPTIONALLY CLEARED

APPLICATION FOR SEARCH AND/OR EXTRACT OF POLICE INCIDENT OR OFFENSE REPORT

— PLEASE PRINT OR TYPE —

INSUFFICIENT, WRONG OR VAGUE INFORMATION MAY RESULT IN A NEGATIVE RESPONSE

FOR OFFICIAL USE ONLY

CITY OF PHILADELPHIA
DEPARTMENT OF RECORDS

YOUR APPLICATION NUMBER IS:

N°: 415

PARTY REQUESTING REPORT *(NAME OF APPLICANT)*
MR. Bayan ALEKSEY

REPORT TO BE MAILED TO *(COMPLETE ADDRESS INCLUDING NAME, COMPANY, STREET ADDRESS AND ZIP CODE)*

NAME: MR. Bayan Aleksey - Room: RA148
ADDRESS: LIEBER C.I. - SK5059
CITY, STATE, ZIP CODE: P.O. BOX: 205
Ridgeville, South CAROLINA
29472-0205

APPLICATION DATE: JANUARY, 05, 2000

TELEPHONE NUMBER OF APPLICANT:

FILE/CLAIM NUMBER *(OPTIONAL)*:

NAME OF PERSON INVOLVED / VICTIM / COMPLAINANT / OFFENDER OR PERSON WHO ACTUALLY REPORTED THIS INCIDENT TO POLICE, ETC.
LISA A. WATSON, DOB: 10/8/65, PA DL# 21-517-068

TIME OF OCCURRENCE: 11:30 ☒ A.M. ☐ P.M.

TYPE OF OFFENSE OR INCIDENT (IF STOLEN / RECOVERED AUTO, *LICENSE TAG NUMBER/STATE MUST BE GIVEN*)
[redacted] MUSTANG

POLICE DISTRICT CONTROL NUMBER *(MUST BE GIVEN)*
9TH DISTRICT POLICE DEPT
NORTHEAST PHILADELPHIA

DATE OF OCCURRENCE

EXACT STREET LOCATION WHERE INCIDENT OR OFFENSE OCCURRED *(MUST BE IN PHILADELPHIA)*
[redacted] LAMAR PLACE, PHILA, PA 19154

PLEASE SEND 2 SELF-ADDRESSED S

MAIL ALL COPIES ALONG WIT

FEE NOT REFUNDABLE

FOR INQUIRIES, CALL POLICE DEPAR
TWELVE WEEKS AFTER RECEIPT OF NUM

* IF YOU HAVE A DISABILITY AND REQUIRE AN ACCOMMODATION IN O
AND/OR TO PARTICIPATE IN A PROGRAM OR SERVICE, CONTACT 686-22

01-23=01
000415#
02 *15.00
*15.00 CK
001-1346
1=14P

82-47 (Rev. 8/97) WHITE COPY–POLICE CANARY COPY–RECORDS PINK COP

...PLICANT AFTER NO. HAS BEEN ASSIGNED

09

FORD MOTOR CREDIT

Applicant EXHIBIT #18

	DATE	TIME	TO/FROM	MODE	MIN/SEC	PGS	CMDH	STATUS
31	12/02	10:48	215 671 0653	UF--S	00'51"	001	203	OK

Ford Credit — CHRIS KOCH FORD — APPLICATION STATEMENT (Please Print) — Dealer Use Only — Offering # 9/27/24

CLASS CODE: ☐ RETAIL ☐ RCL ☐ OTHER

CHECK ONE APPLICABLE BOX (PRIMARY APPLICANT AND JOINT APPLICANTS MUST COMPLETE SEPARATE FORMS):

Primary Applicant: ☒

Joint Applicant:
☐ Application is for joint credit with primary applicant or as a guarantor.
☐ Primary applicant is relying on your/or income for alimony, child support, or separate maintenance or on your income or assets as the basis for repayment of the credit requested.

If Joint Applicant, Relationship to Applicant:
☐ S - Married ☐ P - Parent
☐ O - Other

Last Name	First Name	Middle Initial	Jr/Sr	No. of Dep.	Date of Birth	Age
WATSON	LISA	M	☐ Jr. ☐ Sr.	0	[redacted]	32

Address (Number and Street)	City	State	Zip Code
[redacted] HALDEMAN Ave	PHILA.	PA	19115

Phone In Applicant's Home?	Phone Number			Living: 1 ☐ Own Home Outright; 2 ☐ Buying Home; 3 ☒ Living with Relatives; 4 ☐ Leasing/Renting; 5 ☐ Own/Buying Mobile Home	Lived There	Driver's License No. and State
1 ☒ Yes 2 ☐ No	[redacted]	[redacted]	[redacted] 271		6 Yrs. & Mos.	[redacted]

Name and Address of Landlord or Mortgage Holder: -Family-

Rent or Mtge. Pmt.: 6

Previous Address (Street, City, State and Zip Code) (If less than 2 years at present address):

Lived There: Yrs.

Level Of Education (Age Under 27 Only): 1 ☐ 4-Year College Grad. 2 ☐ 2-Year College Grad. 3 ☐ Special Training 4 ☐ Some College — High School Grad.? 5 ☐ Yes 6 ☐ No

Current Employer Name	City/State				
Super Fresh Supermarket.					
Applicant's Occupation (If military, state rank)	**Time on Job**	**Work Phone Number**	**Gross Salary**		
manager.	4 Yrs. & Mos.	Area Code ([redacted]) [redacted] 31	$ 29000	☐ W - Weekly ☐ Y - Yearly ☐ M - Monthly	
[redacted]	*Alimony, child support or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.	*Source of Other Income	*Other Income $	☐ W - Weekly ☐ Y - Yearly ☐ M - Monthly	

Previous Employer's Name (If less than 5 years at current employer):

City/State:

Time on Previous Job: Yrs.

Name of Bank: PNC - Cornerstone.

1 ☒ Checking & Savings 3 ☐ Savings Only
2 ☐ Checking Only 4 ☐ No Account

Have You Ever Had a Car or Other Merchandise Repossessed? ☒ No ☐ Yes If Yes, When? Month / Year /

Have You Ever Filed Bankruptcy? ☒ No ☐ Yes If Yes, When? Month / Year /

Is Applicant Obligated to Make Alimony, Child Support or Separate Maintenance Payments? ☒ No ☐ Yes If Yes, Amount to Be Paid per Month is $

Creditor's Name and City/State	Date Opened	Monthly Pmt. Amount	Unpaid Balance	Creditor's Name and City/State	Date Opened	Monthly Pmt. Amount	Unpaid Balance
(Current/Previous Car Financed by or Leased Through) (1) Amex	95	50	0	(Other Credit) (3) SEARS	96	0	
(2) VISA	93	21	0	(4) Discover.	96	0	

Name and Address of Applicant's Nearest Relatives/Friends Not In Household	Phone No.	Relationship
(1) Joe Matrick [redacted] Comly RD.	Area Code ([redacted]) [redacted] 34	Brother
(2) Mike WATSON 01 [redacted] Comly RD.	Phone No. Area Code ([redacted]) [redacted] 47	Friend.
(3)	Phone No. Area Code ( )	Relationship

- For the purpose of securing credit from you, I certify that the above information is true and complete to the best of my knowledge. I further certify that I have attained The Age of Majority. I authorize you to check my credit and employment history and to provide and/or obtain information about credit experiences with me.

- Signature: Lisa Watson — Date: 9/27/97

BOX A

(1) Cash Price/Cap Cost (Incl. Tax, Ins., Fees) MSRP $ 26555
INV 24755
(2) Down Payment/Cap Cost Reduction CAP COST 27484
Cash $ ____ + Rebate $ ____ = $ ____ (2)
Trade Allow. $ ____ − Owed $ ____ = $ ____ (B)
Total (If Less Than Zero) $ ____ (2)
(3) Unpaid Balance/Application Total (1-2) 392 x 60 (3)
If ACL Signup $ ____ LEV $ ____
(4) Payable In ____ Mo. Installments of ____ $ ____ (4)

New ☐ Used ☐	Year	Make	Model	Body Style (If used vehicle)	Used Car Miles
	98	FORD	MUSTANG	CONVERTIBLE	

Vehicle Identification Number: | Stock #:

Optional Equipment (If used vehicle): ☒ Air ☐ P/S ☐ P/B ☐ Auto Tr. Other: CD PL, LEATHER

Trade Yr.	Make	Model	Body Style	Dealer Name

[redacted]

INSURANCE HISTORY Is applicant or any other proposed operator insured by the Assigned Risk Plan? ☐ Yes ☒ No

Name _____ Insured Since _____ Automobile Is Applied For _____

Previous Accidents ☐ Yes ☒ No Date of Last Accident _____ Previous Traffic Violations _____

Type of Prior Coverage ☐ Liability ☐ Other Than Liability Operators ☐ Applicant ☐ Other Than Applicant Operating ☐

DRIVERS List all licensed drivers residing in household, including applicant, regardless of relationship, whether or not they will be insured. If married and spouse is not living with applicant, list name and state reason. All drivers during the past THIRTY-SIX months? ☐ Yes ☒ No If "No," complete the following. If necessary, use separate sheet.

Name of Operator	Applicant Date	Place of Violation		Violation Within Previous 36 Months		Total Dollar Payment
		Year	State	Yes	No	Amount
				☐	☐	
				☐	☐	

Are any drivers listed above subject to suspension or revocation of their driving privileges? ☐ Yes ☐ No If "Yes," explain on separate sheet.

1 Applicant or spouse convicted of, or forfeited bail for, any violation of the motor vehicle laws or ordinances of any state or municipality, other than parking violations, within the last 3 years? ☐ Yes ☐ No Date of Last Conviction _____

2 Applicant convicted by any court of driving while intoxicated within the last 3 years? ☐ Yes ☐ No

3 Operator's license of applicant or spouse suspended or revoked within the last 3 years? ☐ Yes ☐ No

4 Operator's license of applicant or spouse ever suspended or revoked? ☐ Yes ☐ No

5 Does any driver listed above have a physical, mental or seizure disorder that may affect the safe operation of a motor vehicle? ☐ Yes ☐ No

If answer to any of the questions 1 through 5 is "Yes," explain on separate sheet.

ACCIDENTS Has any person listed above or anyone in the household had any accidents or losses, whether or not considered to be their fault, during the past THIRTY-SIX months? ☐ Yes ☒ No If "Yes," complete the following. If necessary, use separate sheet.

Name of Operator	Date of Accident	Type of Accident	Type of Damage	
			Auto	Amt.

TAX Are you acting as an agent for another person? If so, all insurance will be issued in the name of such other person and the applicant will be considered a broker. ☐ Yes ☒ No If "Yes," give details _____

INSURANCE Name and address of agent/broker for current policy _____

Type of coverage requested: ☐ Private Passenger, ☐ Commercial ☐ Taxi or Bus ☐ Other (explain) _____

Is applicant to be insured as Additional Insured or Subject ☐ Yes ☐ No

Is a complete Journal by a member of the household? ☐ Yes ☐ No

If "No" to any of the above, explain _____

Is applicant married? ☐ Yes ☐ No

ADDRESS _____

APPLICATION AND LIMITS FOR UNINSURED AND UNDERINSURED MOTORIST COVERAGE This application must be completed and the policy mailed to the insurance company no later than the effective date and time shown below. Absence of this application will result in delaying the issuance of requested coverages.

I HEREBY REQUEST UNINSURED AND UNDERINSURED MOTORIST COVERAGE AS PROVIDED BY SUBSECTION A OF SECTION 1731 OF THE PENNSYLVANIA MOTOR VEHICLE FINANCIAL RESPONSIBILITY LAW OF 1984 AS AMENDED AND AS FURTHER AMENDED BY ACT 6 OF 1990 AS FOLLOWS: (Choose one of the limits listed below and initial your choice.)

I Choose a limit of liability for this coverage which is equal to my bodily injury liability coverage limit. I understand that this limit may be increased to a higher limit without my signing another application. I understand that if I have chosen stacked limits of liability for my bodily injury liability coverage, I have also chosen stacked limits of liability for this coverage. I understand that if I have chosen non-stacked limits of liability for my bodily injury liability coverage, I have also chosen non-stacked limits of liability for this coverage.

I Choose a limit of liability for this coverage which is less than my bodily injury liability coverage limit but not less than the minimum limit required by the Pennsylvania Motor Vehicle Financial Responsibility Law of 1984. I understand that this limit may be increased to a higher limit without my signing another application. I understand that if I have chosen stacked limits of liability for my bodily injury liability coverage, I have also chosen stacked limits of liability for this coverage. I understand that if I have chosen non-stacked limits of liability for my bodily injury liability coverage, I have also chosen non-stacked limits of liability for this coverage.

I Reject uninsured and underinsured motorist coverage. I understand that I am purchasing insurance that will not pay for damages I am legally entitled to recover because of bodily injury caused by the negligence of an uninsured or underinsured motorist.

I Reject uninsured motorist coverage. I understand that I am purchasing insurance that will not pay for damages I am legally entitled to recover because of bodily injury caused by the negligence of an uninsured motorist.

I Reject underinsured motorist coverage. I understand that I am purchasing insurance that will not pay for damages I am legally entitled to recover because of bodily injury caused by the negligence of an underinsured motorist.

I Reject uninsured and underinsured motorist coverage for the following vehicle(s) listed on the declarations page of the policy. I understand that I am purchasing insurance that will not pay for damages I am legally entitled to recover because of bodily injury caused by the negligence of an uninsured or underinsured motorist.

I Reject uninsured motorist coverage for the following vehicle(s) listed on the declarations page of the policy. I understand that I am purchasing insurance that will not pay for damages I am legally entitled to recover because of bodily injury caused by the negligence of an uninsured motorist.

I Reject underinsured motorist coverage for the following vehicle(s) listed on the declarations page of the policy. I understand that I am purchasing insurance that will not pay for damages I am legally entitled to recover because of bodily injury caused by the negligence of an underinsured motorist.

I Choose a limit of liability for this coverage which is less than my bodily injury liability coverage limit but not less than the minimum limit required by the Pennsylvania Motor Vehicle Financial Responsibility Law of 1984. I understand that this limit may be increased to a higher limit without my signing another application. I understand that if I have chosen stacked limits of liability for my bodily injury liability coverage, I have also chosen stacked limits of liability for this coverage. I understand that if I have chosen non-stacked limits of liability for my bodily injury liability coverage, I have also chosen non-stacked limits of liability for this coverage.

I Choose a limit of liability for this coverage which is equal to my bodily injury liability coverage limit. I understand that this limit may be increased to a higher limit without my signing another application. I understand that if I have chosen stacked limits of liability for my bodily injury liability coverage, I have also chosen stacked limits of liability for this coverage. I understand that if I have chosen non-stacked limits of liability for my bodily injury liability coverage, I have also chosen non-stacked limits of liability for this coverage.

[redacted] 1528

Effective Date and Time 9 29 97 3:01 ☐ A.M. ☒ P.M.

A premium charge will be made for the above coverage. The policy shall not be issued or renewed without the payment of the premium charge.

Effective Date and Time _____ ☐ A.M. ☐ P.M.

I.A. Premium charge will be made for the above coverage. The policy shall not be issued or renewed without the payment of the premium charge.

I. Premium charge will be made for the above coverage. The policy shall not be issued or renewed without the payment of the premium charge.

SIGNATURE The undersigned hereby applies for the insurance described herein and represents that the answers and statements made herein are complete and true to the best of the knowledge and belief of the undersigned. The undersigned understands that any misrepresentation, omission, concealment of facts or incorrect statements may be grounds for rescission of the policy or denial of coverage. The undersigned agrees that the insurance company may obtain information from any source it deems necessary in connection with this application. The undersigned authorizes any person, organization or agency to furnish such information to the insurance company. The undersigned understands that the insurance company may make a report to the Insurance Department of the Commonwealth of Pennsylvania concerning the cancellation or refusal to issue insurance. The undersigned understands that the insurance company may make a report to the Insurance Department of the Commonwealth of Pennsylvania concerning the cancellation or refusal to issue insurance. The undersigned understands that the insurance company may make a report to the Insurance Department of the Commonwealth of Pennsylvania concerning the cancellation or refusal to issue insurance.

IN THE EVENT E-MAIL COVERAGE IS REQUESTED, PRIOR TO THE EFFECTIVE DATE AND TIME OF COVERAGE AS SET FORTH ABOVE, THE UNDERSIGNED AGREES TO THE TERMS AND CONDITIONS OF THE E-MAIL COVERAGE AND ROLE OF COUNSEL SECTION OF THIS APPLICATION.

X Lisa Watson Date 9/29/97 Time 3:01 ☐ A.M. ☒ P.M.

Applicant's Signature

I, _____, certify that I am a licensed insurance producer in the Commonwealth of Pennsylvania and that I have complied with the requirements of Section 1731 of the Pennsylvania Motor Vehicle Financial Responsibility Law of 1984 as amended by Act 6 of 1990 and the Regulations promulgated thereunder.

Producer's Signature _____ Date 9/29/97 Time 3:01 ☐ A.M. ☒ P.M.

IMPORTANT NOTICE

Insurance Companies operating in the Commonwealth of Pennsylvania are required by Law to make available for purchase the following benefits for you, your spouse or other relatives or wives in your custody or in the custody of your relatives, residing in your household, occupants of your motor vehicle or persons struck by your motor vehicle:

(1) Medical benefits, up to at least $100,000.

(1.1) Extraordinary medical benefits, from $100,000 to $1,100,000, which may be offered in increments of $100,000.

(2) Income loss benefits, up to at least $2,500 per month up to a maximum benefit of at least $50,000.

(3) Accidental death benefits, up to at least $25,000.

(4) Funeral benefits, $2,500.

(5) As an alternative to paragraphs (1), (2), (3) and (4), a combination benefit, up to at least $127,500 of benefits in the aggregate or benefits payable up to three years from the date of the accident, whichever occurs first, subject to a limit on accidental death benefit of up to $25,000 and a limit on funeral benefit of $2,500, provided that nothing contained in this subsection shall be construed to limit, reduce, modify or change the provisions of section 1731(c) relating to availability of adequate limits.

(6) Uninsured, underinsured and bodily injury liability coverage up to at least $100,000 because of injury to one person in any one accident and up to at least $300,000 because of injury to two or more persons in any one accident or, at the option of the insurer, up to at least $300,000 on a single limit for these coverages, except for policies issued under the Assigned Risk Plan. Also, at least $5,000 for damage to property of others in any one accident.

Additionally, insurers may offer higher benefit levels than those enumerated above as well as additional benefits. However, an insured may elect to purchase lower benefit levels than those enumerated above.

Your signature on this notice or your payment of any renewal premium evidences your actual knowledge and understanding of the availability of these benefits and limits as well as the benefits and limits you have selected.

If you have any questions or you do not understand all of the various options available to you, contact your agent or company. If you do not understand any of the provisions contained in this notice, contact your agent or company before you sign.

X Lisa Watson
Applicant's Signature

APPLICANT'S STATEMENT I DECLARE AND AFFIRM THAT I HAVE NO KNOWLEDGE OF ANY AUTOMOBILE INSURANCE IN THE STATE WHERE I RESIDE EXCEPT AS SET FORTH IN THE STATE OF APPLICATION. I affirm that all of the statements contained in this application are true, that I am not now insured under any automobile insurance policy except as listed herein, and that I will not purchase any automobile insurance policy except as listed herein during the policy period. I understand that if I am found to be in violation of this affirmation, my insurance coverage may be cancelled or rescinded. I understand that I am not covered for any accident or loss that occurs while my vehicle is being operated by a person who is not listed on the policy. I understand that I am not covered for any accident or loss that occurs while my vehicle is being operated by a person who is not listed on the policy. I understand that I am not covered for any accident or loss that occurs while my vehicle is being operated by a person who is not listed on the policy.

I, the undersigned, hereby affirm that all of the statements contained in this application are true, that I am not now insured under any automobile insurance policy except as listed herein, and that I will not purchase any automobile insurance policy except as listed herein during the policy period. I understand that if I am found to be in violation of this affirmation, my insurance coverage may be cancelled or rescinded. I understand that I am not covered for any accident or loss that occurs while my vehicle is being operated by a person who is not listed on the policy. I understand that I am not covered for any accident or loss that occurs while my vehicle is being operated by a person who is not listed on the policy. I understand that I am not covered for any accident or loss that occurs while my vehicle is being operated by a person who is not listed on the policy.

X Lisa Watson Date 9/29/97 Time 3:01 ☐ A.M. ☒ P.M.

Applicant's Signature

NOTICE TO APPLICANT AND PRODUCER In the event that this application is not completed within 30 days, notify the Risk Center, P.O. Box 8126, Philadelphia, PA 19101-8126. Please use application number _____

ATTACHMENTS MANDATORY — Copy of Valid Registration

5411

SIGNED BY THE APPLICANT AND PRODUCER. (For forms where radio is insufficient (check separate sheet))

ANTI-FRAUD STATEMENT

[redacted] John H Turner [redacted] Cottman Ave Phila PA 19149

[redacted] Watson, Lisa A. [redacted] Haldeman Ave. Phila Phila PA. [redacted]

[redacted] Manager Supervisor Burdsall Ave Phila, PA.

FOR EACH VEHICLE TO BE INSURED, ATTACH A PHOTOCOPY OF THAT VEHICLE'S CURRENT VEHICLE REGISTRATION.

[redacted] 93 Ford Mustang [redacted] Lisa Watson Same 9-97 [redacted] Ford Motor Credit PO Box Allde Same, MI [redacted] Haldeman Ave [redacted] 14 [redacted]

CLEAN RISK RATE ☐ OTHER THAN CLEAN RISK RATE

	4.00	
	1130.00	
	315.00	

5412

PENNSYLVANIA DRIVER'S LICENSE

[redacted]



111

Issued 05/20/97 | Birth Date [redacted] | Expires 10/31/99

Sex F | Height 5' 03" | Eyes HAZ | Dups 01

Class C | Endorsements —

Com./Med. Restrictions "F"

[redacted] SUNSET DRIVE
RICHBORO PA 18954

LISA A WATSON

Lisa A Watson

5413

	1998 MUSTANG GT 2-DR COUPE	19970 00		18218
ZR	CRYSTAL WHITE CLEARCOAT			
DS	SADDLE LEATHER			
99X	.4.6L 2V SOHC V-8 ENGINE	NC		NC
445	.5-SPEED MANUAL TRANSMISSION	NC		NC
T40	P245/45ZRX17 BSW TIRES		NC	NC
60C	CONVENIENCE GROUP	295	00	263 00
	.FRONT FLOOR MATS			
	.SPEED CONTROL			
	.DEFROSTER, REAR WINDOW			
45C	OPTIONAL RATIO AXLE	200	00	178 00
552	ANTI-LOCK BRAKING SYSTEM	500	00	445 00
64Y	WHEELS, UNIQUE 17" ALUMINUM	500	00	445 00
D	LEATHER SEATG SURFS SPORT BKTS	500	00	445 00
	TOTAL VEHICLE & OPTIONS	21965	00	19994 00
	DESTINATION & DELIVERY	525	00	525 00
	SCHEDULE A (MEMO) .00			
	TOTAL FOR VEHICLE	22490	00	

35530

06 U.S. GAL GAS FACTORY 9 60
PRICED DORA
BATCH-ID VH29103280 N RA 2X
PRICE LEVEL 810190P42 VIN: 1FAFP42X6WF120050
SHIPPING WEIGHT 3227 LBS.

120050

Key code
#0823X
9/24/97

19919.60

THIS INVOICE MAY NOT REFLECT THE FINAL COST OF THE VEHICLE IN VIEW OF THE POSSIBILITY OF FUTURE REBATES, ALLOWANCES, DISCOUNTS AND INCENTIVE AWARDS FROM FORD MOTOR COMPANY TO THE DEALER.

FOAF/LMDA ASSESSMENT	INVOICE TOTAL	LESS HOLDBACK FOR DEALER ACCOUNT	LESS APPROX FINANCING COST FOR DEALER ACCOUNT	MEMO INVOICE LESS HOLDBACK & FIN COST	A PLAN
50.00	20,578.60	659.00	240.00	19,679.60	19,645.60

659.00 60.00 1776.00 .00 599.00 17978.00

SOLD TO
CHRIS KOCH FORD INC 16C048
P.O. BOX 1116
TURNERSVILLE NJ 08012

SHIP TO (IF OTHER THAN ABOVE)

ID	PA	STATE	
2	6	NJ	RC5R

DATE INV PREPARED	ITEM NUMBER	TRIM	FINANCE
08 29 97	16-7005	DS	11

SHIP THROUGH

FINANCE 320 - 421 6A (6/97)

5414

NEW JERSEY
DEPARTMENT OF THE TREASURY
DIVISION OF TAXATION

MOTOR VEHICLE DEALER SALES AND USE TAX EXEMPTION REPORT

(See Reverse Side for Instructions)

(a) Vehicle Dealer CHRYS KOCH FORD, INC

P.O. BOX 1116 TURNERSVILLE, NJ 08012

Address 609-728-6500

Telephone Number _____ Taxpayer ID Number [redacted]

I PURCHASER INFORMATION

(a) LESSEE LISA A WATSON [redacted] HALDEMAN AVE PHILADELPHIA PA 19115 [redacted] (c) Date of Purchase 09/27/97

(b) New Jersey Address [redacted] HALDEMAN AVE PHILA PA, 19115

(c) Out-of-State Address [redacted] [redacted]71 MANAGER

(d) Telephone Number SUPERFRESH Code _____ Number _____ (g) Occupation PHILA, PA

(h) Employer PA 21517068 Address 10/31/99

(i) Driver's License Issued by State of: _____ Number _____ Expiration Date _____

(k) Other Driver's License Issued by State of: _____ Number _____ Expiration Date _____

II VEHICLE IDENTIFICATION DATA

FORD 98

Make of Vehicle 1FAFP42X6WF120050 Model _____ Year WHITE

Full Serial Number _____ Body Type _____ Color _____

III COMPUTATION OF PRICE

(a) Enter Full Purchase Price ..... $ term 24 months

(b) Enter Trade-In Allowance or Discount, if any ..... $ Monthly Payment 532.

(c) Adjusted Purchase Price (Item A Less Item B) ..... $ _____

(d) Trade-In Data

Make of Vehicle	Model	Year	State of Registration
			PA

Full Serial Number	Body Type	Color	Plate Number

IV EXEMPTION CERTIFICATION

(a) I purchaser certifies he/she is a nonresident of New Jersey, has no permanent place of abode in New Jersey, is not engaged in carrying on in New Jersey any employment, trade, business or profession in which the motor vehicle will be used in New Jersey.

Sign Here Lisa A Watson 9-27-97
Purchaser (If corporation, an authorized officer must sign) (Date)
LESSEE

V DEALER OF CERTIFICATION

I (We) certify that I have examined the above form after its completion and the information given is true and correct to the best of my knowledge and belief

Sign Here _____ 9-27-97
Dealer (Date)

PRIVACY ACT NOTIFICATION

The Federal Privacy Act of 1974 requires all agencies requesting information to inform individuals from whom it seeks information why the request is being made and how the information is being used.

Your social security number is used primarily to account for and give credit for tax payments. It is also used in the administration and enforcement of all tax laws for which the Division of Taxation has statutory responsibility.

THIS FORM MAY BE REPRODUCED WITHOUT PRIOR AUTHORITY

nl car

5415

RED CARPET LEASE CERTIFICATE OF INSURANCE

(See Instructions on Reverse Side)

INSURER

(NAME AND ADDRESS OF INSURANCE CARRIER OR COMPANY)

John 4 Tower
[redacted] Cottman Ave
Phila Pa. 19149
[redacted].00

POLICY

NUMBER: [redacted]

EFFECTIVE DATE: 9/29/97

EXPIRATION DATE: ~~9/29/98~~ 98

LIMITS OF LIABILITY

CARS AND LIGHT TRUCKS (16,000 LB. GVW AND LESS)

COVERAGE	MINIMUM	MINIMUM (If other than stated)	ACTUAL
BODILY INJURY AND PROPERTY DAMAGE	$15,000 / $30,000 $5,000	100/300/50	100/300/50
COLLISION	UP TO $1,000 DEDUCTIBLE	500	500/500
COMPREHENSIVE	UP TO $1,000 DEDUCTIBLE	500	

MEDIUM AND HEAVY TRUCKS (OVER 16,000 LB. GVW)

COVERAGE	MINIMUM	ACTUAL
SINGLE LIMIT	$1,000,000 (TRACTORS) $500,000 OTHER	
COLLISION	UP TO $2,500 DEDUCTIBLE	
COMPREHENSIVE	UP TO $2,500 DEDUCTIBLE	

ADDITIONAL INSURED

☐ FORD CREDIT TITLING TRUST
☐ FORD MOTOR CREDIT COMPANY
P.O. BOX 5466
ROME, GA 30162-5466

I/V 10/21/94 8. s/w Lina.

VEHICLE

YEAR	MAKE	MODEL
98	FORD	MUSTANG

[redacted]

LOSS PAYEE

☐ FORD CREDIT TITLING TRUST
☐ FORD MOTOR CREDIT COMPANY
P.O. BOX 5466
ROME, GA 30162-5466

NOTIFICATION

ADDITIONAL INSURED AND LOSS PAYEE WILL BE NOTIFIED IN WRITING AT LEAST 10 DAYS IN ADVANCE OF A POLICY CANCELLATION NON-RENEWAL, OR REDUCTION IN COVERAGE.

TO BE COMPLETED BY LESSEE

THIS IS TO CERTIFY to Ford Motor Credit Company that I, LISA H WATSON (Please Print Full Name) [illegible] Credit.

Lessee's Signature: [signature]

Lessee's Address: [redacted] HARDEMAN AVE
Philadelphia PA. 1911[illegible]

TO BE COMPLETED BY INSURANCE AGENT

WE CERTIFY that we are Agents of the Insurer listed above and are authorized by them to execute this certificate on their behalf.
WE FURTHER CERTIFY that the [illegible] above is insured for the coverage stated above.

AGENT

NAME: [illegible]

ADDRESS: _____

TELEPHONE: [illegible]-744

_____
(Insurance Agent's Signature)

BY: _____
(Insurance Authorized Representative)

DATE: _____

either Fax (706-236-3759) or mail the form to:
P.O. Box 5466, Rome, GA 30162-5466.

[illegible] SEPT. 96
PREVIOUS EDITIONS MAY NOT BE USED

White - Customer Copy Yellow - Branch Copy To Forward ISC Pink - Branch File

5416

P. O. BOX 1116
TURNERSVILLE, NJ 08012

FORD MOTOR CREDIT COMPANY
PO BOX 5555
MT. LAUREL NJ 08054

DEAL# 13696
09/27/97
FRED DANIELLO
(215)632-8771

98 FORD NEW 120050 MUSTANG [redacted] 10 0823X

20860.85

Lisa A. Watson

1ST MONTHLY PMT. ~~484.52~~ 533.97
SECURITY DEP.

~~20376.33~~
20397.77

2017.75

N/A

24 532.97

STOCK NO. 120050

ODOMETER DISCLOSURE STATEMENT

Federal law (and State law, if applicable) requires that you state the mileage upon transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

I, CHRIS KOCH FORD, INC (TRANSFEROR'S NAME, PRINT) of P.O. BOX 1116 (ADDRESS) TURNERSVILLE, NJ 08012

Owner of Year 98 Make FORD

Body Type _____ Model MUSTANG VIN [redacted]

License No. _____ Sticker No. _____ State _____ Year _____

State that the odometer now reads 10 (no tenths) miles and to the best of my knowledge that it reflects the actual mileage of the vehicle described above, unless one of the following statements is checked.

☐ (1) I hereby certify that to the best of my knowledge the odometer reading reflects the amount of mileage in excess of its mechanical limits.

☐ (2) I hereby certify that the odometer reading is NOT the actual mileage. WARNING – ODOMETER DISCREPANCY.

TRANSFEROR'S NAME: CHRIS KOCH FORD, INC (PRINTED NAME)

TRANSFEROR'S ADDRESS: P.O. BOX 1116 (STREET)

TURNERSVILLE (CITY) NJ (STATE) 08012 (ZIP CODE)

TRANSFEROR'S SIGNATURE: [signature]

DATE OF STATEMENT: 09/27/97

TRANSFEREE'S NAME: LISA A WATSON (PRINTED NAME)

TRANSFEREE'S ADDRESS: [redacted] HALDEMAN AVE (STREET)

PHILADELPHIA (CITY) PA (STATE) 19115 (ZIP CODE)

TRANSFEREE'S SIGNATURE: [signature]

_____ (PRINTED NAME)

ODOMETER STATEMENT

417

...O. BOX 5555
...MT. LAUREL NJ 08054-5555

10-02-97

BC N168 R772 12 **5418**

LEASE DATE	09-27-97	TYPE	NET
TERM 024	TERMINATION	09-27-99	CHART NO 00
LOCAL FEES INCLUDED IN BASE RENTAL AMOUNT $	.00	TAX LOCATION CODE	3705

TAXES: STATE 6.00% COUNTY 3.00% CITY 1.

CLASS W1 TYPE 10 ALT. TAX LOC. CODE 00

TAX ID:	TAX AMT:	FEE ID:	FEE AMT
TAX ID	TAX AMT:	FEE ID:	FEE AMT
TAX ID:	TAX AMT.	FEE ID.	FEE AMT
TAX ID	TAX AMT:	FEE ID	FEE AMT
TAX ID	TAX AMT	FEE ID:	FEE AMT.
FEE ID	FEE AMT:	FEE ID:	FEE AMT

CHRIS KOCH FORD INC
3641 RT 42
TURNERSVILLE NJ 08012

ESSEE IS: INDIVIDUAL

WATSON LISA
[redacted] HALDEMAN AVE
PHILA PA
[redacted] 19115

TRANSACTION DATA:

INVOICE AMOUNT	20578.60
DOT EQUIP.	.00
TOTAL COST	20578.60
(11.1 %)	2300.00
DOWN PAYMENT	2017.75
ACQUISITION COST	20860.85
RITAL SECURITY	.00
FERRED GROSS:	
STANDARD (.0%)	.00
EXCESS	.00
ST MONTHLY PAYMENT	532.97
TTLEMENT AMOUNT	20327.88
LEASE END PAYOFF	13718.90
SS MILEAGE CHG.	15 CENTS
MILE O.ER	24.000 MILES
ALER PROTECTION	N

LEASE MONTH	RENTAL DUE DATE	BASE RENTAL AMOUNT	BASE PAYOFF AMOUNT	OTHER CHARGES	DEALER SERVICE POLICY	TAXES DUE	VEHICLE INS. PREMIUM	TOT SCHEDL AMOU DUE
1	92797	48452	2086085			4845		53
2	102797	48452	2059476			4845		53
3	112797	48452	2032612			4845		53
4	122797	48452	2005491			4845		53
5	12798	48452	1978110			4845		53
6	22798	48452	1950466			4845		53
7	32798	48452	1922558			4845		53
8	42798	48452	1894382			4845		53
9	52798	48452	1865936			4845		53
10	62798	48452	1837217			4845		53
11	72798	48452	1808223			4845		53
12	82798	48452	1778951			4845		53
13	92798	48452	1749399			4845		53
14	102798	48452	1719564			4845		53
15	112798	48452	1689443			4845		53
16	122798	48452	1659033			4845		53
17	12799	48452	1628332			4845		53
18	22799	48452	1597336			4845		53
19	32799	48452	1566043			4845		53
20	42799	48452	1534451			4845		53
21	52799	48452	1502556			4845		53
22	62799	48452	1470355			4845		532
23	72799	48452	1437846			4845		532
24	82799	48452	1405025			4845		532
				LEASE TERMINATES				532
	092799		1371890					13718
	USE FOLLOWING SCHEDULE FOR EXTENSION OF LEASE							
E1	92799	48452	1371890			4845		532
E2	102799	48452	1338437			4845		532
E3	112799	48452	1304663			4845		532
E4	122799	48452	1270566			4845		532
E5	12700	48452	1236142			4845		532
E6	22700	48452	1201388			4845		532
E7	32700	48452	1166301			4845		532
E8	42700	48452	1130878			4845		532
E9	52700	48452	1095115			4845		532

LEASED VEHICLE:
YR MAKE 98 MUSTG
MODEL MUSTG
BODY 2DR
[redacted]

COMMENTS:

BRANCH

5419

[illegible] CONSUMER CREDIT REPORT **********
FORD MOTOR CREDIT

**** Dept: CREDIT/ATLAS/TRACE/CANADA / Queued by: SUPERVISOR ********

D. [redacted] 11-25-1997 TIME:14:52:06 SUBJECT ID:1[redacted]903

I WATSON,LISA,,,*
[redacted] HALDEMAN,AV,PHILADELPHIA,PA,19115,*
*

TRANS UNION CREDIT REPORT

<FOR>	<SUB NAME>	<MKT SUB>	<INFILE>	<DATE>	<TIME>
(I) N NJ1231213	FORD MOTOR C	17 PH	11/97	11/25/97	12:47CT

<SUBJECT>
WATSON, LISA
<CURRENT ADDRESS> <DATE RPTD>
[redacted] HALDEMAN AV., PHILADELPHIA PA. 19115 11/97

S P E C I A L M E S S A G E S
NO SUBJECT FOUND

E N D O F C R E D I T R E P O R T - S E R V I C E D B Y :
TRANS UNION CORPORATION (800) 888-42
60 W. SPROUL ROAD, PO BOX 390,SPRINGFIELD, PA 19064-0390

COPYRIGHTED TRANS UNION 1994

D

** END OF REPORT ID: 11-25-1997/14:52:06 (ORN: 277) [B-0/F-0/P-0/O-0] ***

CUST NO 6117-0655

5420

FORD MOTOR CREDIT MOUNT LAUREL, NJ | DAT

11/24/

CASE INFORMATION

ACCOUNT REP. Jon Eldridge	ACCOUNT#: [redacted]
CUSTOMER: Lisa Watson	CO-BUYER:
STREET: [redacted] Haldeman Ave	STREET:
CITY: Philadelphia ST: PA	CITY: ST:
DL#: [redacted]	DL#:
SS#: [redacted] DOB [redacted]	SS#: DOB:
POB: NA	POB:
POB ADD.	POB ADD.

VEHICLE INFORMATION

YEAR: 1998	MAKE: Ford	MODEL: Mustang	COLOR:
[redacted]		KEY CODES:	
DEALER: Chris Koch Ford		TAG#:	

ACCOUNT STATUS

DATE PAST DUE: 10/27/97	BALANCE DUE: 24,862.86
PAYMENT AMOUNT: $532.97	LAST PAYMENT DATE: 10/2/97 ~~(See deposit)~~

ADDITIONAL INFORMATION

[illegible] insurance also possible skip. Buyer claims Jacy Barclay has it. This is high priority case. Ph#'s [redacted]11, [redacted]31, first payment default. Cr says her home address is [redacted] Lamar Pl, Philadelphia, PA 19154. Buyer says [redacted] Haldeman Ave. Barclay's address.

1204027
5421 12/4/97 at 9:43:52 AM
[redacted]

From : INFORMATION REQUEST
Pages : 1 (including Cover)

[redacted]

BEVERLY GAVIN

[redacted] RICHTON RD

PHILADELPHIA PA

DEC 04 '97 10:47 information request PAGE.01

1126106
1/25/97 at 3:50:40 PM
[redacted] LISA WATSON

From : INFORMATION REQUEST
Pages : 1 (including Cover)

5422

[redacted]71

ANDREW WATSON

[redacted] LAMAR PLACE

PHILADELPHIA PA 19154

NOV 25 '97 16:54 information request PAGE.01

5423

...CED INSIDE THE WORKSHEET, SHALL REMAIN ON ASSIGNED COLLECTION DESK FOR FOLLOW-UP UNTIL SUCH ...NER IS LOCATED OR THE ACCOUNT IS CHARGED OFF. (PLACE WORKSHEET IN CUSTOMER FOLDER FOR FUTURE ...E RE-FILING CUSTOMER FOLDER.) PRINT IN A LEGIBLE MANNER, USE BACK COVER IF MORE SPACE IS REQUIRED.

Page

...e (Last, First, Middle Initial)	Account Number	Social Security No.
Watson, Lisa, A	[redacted]	[redacted]

...own Address	Last Phone No.	Date of Birth	Age	Height	Weight	Color Hair	Color Eyes
...mar Pl, Phl, PA 19154	[redacted]71	[redacted]	32	5'3			Hazel

VEHICLE DESCRIPTION

Year	Make	Model	Color	Serial No.	Li...ense No.	Key No.
1998	Ford	Mustang	Wht	1FAFP42X6WF120050	[redacted]	023X

Selling Dealer Name and Phone No.	Contract Date	Original Balance	Schedule of Payments (No. and Amt.)
Chris Kirk Ford [redacted]	9/27/97	$15,395.83	24/$532.97

PLAN	Date Repurchase Expires	Date of Last Payment	Amount of Last Payment	Current Balance	Current Due Date
WOR ☑ RA ☐ PRA ☐		4/27/~~97~~ 12/97	$532.47	$14,262.86	10/27/97

Contact Date	Customer Data	Area Code/Phone No.	Results of Investigation
	Sec. A 1. Residence(s)		
	2. Relatives and Friends (Names and Addresses)		
	His Parents:		
	Her Parents:		
	Other (Brothers, Sisters, In-Laws, etc.) (Please Specify)		
	3. Employer(s)		

Customer Data	Area Code/Phone No.	Results of Investig 5424
reditors – When checking with creditors – obtain all personal references on their applications.		
5. Neighbors – Friends (Names and Addresses)		
6. Landlord or Mortgagee Name		
7-16. Miscellaneous (For additional space use remark section).		
12/22 #168 2nd –		Steve Leonard Fred Daniello is called on deal + is still with Nickdenkips – Steve does storage calls Dionne to open in 2 weeks after the deal Fred spoken – Joe police were after Thompson for firing a gun or something. Joe Gentile – (28) Casey – Nickel Hair –

5425 small kid

Hershey Derby Lodging Hall

Race cars — drag — motorcycles } Juvenile Delinquency

Many people at Motion Enterprise [redacted] 00 (see 70C-9900)

New Cadillac on side of car — truck right

Stock Ct white/ —

Cordaway 1978 Lincoln Town Car

Joe Barkley died 9/27 — 4 weeks — Church meeting

friend Mike (Ritz) Centreidy Airport

New York guess With Watergate Bridge

shot someone in Falls Twp 9/29 — Del Co [redacted] 16/

15th Dist Det Haffer [redacted] 56 end of Jan. 1978

Glass tab plate New York = copied to top as well info

PF KEY __ NAM/ADDR/PHN: M ZIP+4: _ NEIGHBOR: _ COA: _ DA+: 5426

NAME OR PHONE #: JOSEPH BARKLEY

PUT ADDRESS:

ORMATION CITY/STATE/ZIP: NEW YORK SEARCH TYPE:

QUESTED JOSEPH A BARKLEY PHONE#... [redacted] 20

DATA [redacted] E 53RD ST

BROOKLYN NY 11203

LAST SEARCH TYPE: S-STA

ADDITIONAL DATA

AGE 75 - GENDER M

LENGTH OF RES 11 UNITS 1

HOUSEHOLD MEMBERS:

DIANE
F 45-49

PF 01=HELP 02=RST ADDR 03=RST NAME 04=RST NEGH 05=SHOW COA 06=RMV WIND

PF 07=PG BACK 08=PG FRWD 09=DEMOGRPH 11=FAMILY 12=ALL DATA 24=MORE PFs

5427

PF KEY __ NAM/ADDR/PHN: M ZIP+4: _ NEIGHBOR: _ COA: _ DA+: _

NAME OR PHONE #: JOSEPH BARKLEY

OUT ADDRESS:

FORMATION CITY/STATE/ZIP: NEW YORK SEARCH TYPE:

QUESTED JOSEPH BARKLEY PHONE#... [redacted] 2S

DATA [redacted] W 142ND ST

NEW YORK NY 10031

LAST SEARCH TYPE: S-STA

ADDITIONAL DATA

AGE 50 - 54 GENDER M

LENGTH OF RES 01 UNITS 5

NO DATA AVAILABLE

PF 01=HELP 02=RST ADDR 03=RST NAME 04=RST NEGH 05=SHOW COA 06=RMV WIND

PF 07=PG BACK 08=PG FRWD 09=DEMOGRPH 11=FAMILY 12=ALL DATA 24=MORE PFs

RET NAM/ADDR/PHN: M ZIP+4: NEIGHBOR: COA: DA+:

NAME OR PHONE #: JOSEPH BARKLEY

OUT ADDRESS:

FORMATION CITY/STATE/ZIP: NEW YORK SEARCH TYPE:

LAST SEARCH TYPE: S-STA

REQUESTED DATA CHOICE: 4 RECORDS HAVE BEEN SELECTED AS POSSIBLE TARGETS, PLEASE CHOOSE THE RECORD TO VIEW SELECTED OPTIONS.

SELECTIONS

CITY: BROOKLYN		NY			
001	JOSEPH A	BARKLEY	[redacted] E 53RD ST		[redacted]27
CITY: GRAHAMSVILLE		NY			
002	JOSEPH C	BARKLEY	[redacted] KLOTHE DR		[redacted]92
CITY: MANHATTAN		NY			
003	JOSEPH	BARKLEY	[redacted] W 142ND ST		[redacted]83
CITY: OGDENSBURG		NY			
004 *	JOSEPH	BARKLEY	[redacted] GATES ST		[redacted]07

PF 01=HELP 02=RST ADDR 03=RST NAME 04=RST NEGH 05=SHOW COA 06=RMV WIND
PF 07=PG BACK 08=PG FRWD 09=DEMOGRPH 11=FAMILY 12=ALL DATA 24=MORE PFs

5429

Lessee (and Co-Lessee) – Name and Address (including County):
LISA A WATSON
[redacted] HALDEMAN AVE
PHILADELPHIA PA 19115

Lessor – Name and Address: CHRIS KOCH FORD, INC
P.O. BOX 1116 TURNERSVILLE, NJ 08012

Phone Number: [redacted]00

Lease Ua

"Ford Credit" is Ford Motor Credit Company. The "Holder" is FORD MOTOR CREDIT COMPANY and its assigr
By signing "You" (Lessee and Co-Lessee) agree to lease this Vehicle according to the terms on the front and back of this lease.

New/Used/Demo	Mileage at Delivery	Year/ Make/Model	GVW if Truck (lbs.)	Vehicle ID #	Vehicle Use
NEW	10 ✓	98 FORD MUSTANG		[redacted] ✓	PERSON/

Prior Use (If used or odometer is in excess of 1,000 miles.)	# Cylinders	Transmission	Brakes	Steering	Air Conditioning	MSRP
	8	MANUAL	POWER	POWER	YES	✓ 2249(

Amount Due At Lease Signing or Delivery (Itemized below)* $ 3000.00

Monthly Payments
Your first monthly payment of $ 532.97 is due on 09/27/97 followed by 23 payments of $ 532.97 due on the 27TH date of each month. The total of Your monthly payments is $ 12791.28

Other Charges (not part of Your monthly payment)

Disposition fee (If You do not purchase the Vehicle)	N/A
	N/A
	N/A
Total	$ N/A

Total of Payments (The amount You will ha paid by the end of the lease) $ 15258.31

* Itemization of Amount Due at Lease Signing or Delivery

Amounts Due At Lease Signing or Delivery:

Capitalized cost reduction	$ 2017.75
First monthly payment	532.97
Refundable security deposit	N/A
Title fees	N/A
Registration fees	150.00
DOC FEE	97.50
	N/A
	N/A
CAP REDUCE TAX	201.78
Total	$ 3000.00

How the Amount Due at Lease Signing or Delivery will be paic

Net trade-in allowance	$ N/.
Rebates and non-cash credits	N/.
Amount to be paid in cash	3000.0(
Total	$ 3000.0(

Your monthly payment is determined as shown below:

Gross capitalized cost. The agreed upon value of the Vehicle ($ 22878.60) and any items You pay over the lease term (such as service contracts, insurance, and any outstanding prior credit or lease balance) (Itemized below)**		$ 22878.6(
Capitalized cost reduction. The amount of any net trade-in allowance, rebate, non-cash credit, or cash that You pay that reduces the gross capitalized cost	–	2017.75
Adjusted capitalized cost. The amount used in calculating Your base monthly payment	=	20860.85
Residual value. The value of the Vehicle at the end of the lease used in calculating Your base monthly payment	–	13718.5(
Depreciation and any amortized amounts. The amounts charged for the Vehicle's decline in value through normal use and for other items paid over the lease term	=	7141.93
Rent charge. The amount charged in addition to the depreciation and any amortized amounts	+	4486.53
Total of base monthly payments. The depreciation and any amortized amounts plus the rent charge	=	11628.48
Lease term. The number of months in Your lease	÷	24
Base monthly payment	=	484.5(
Monthly sales / use tax	+	48.45
	+	N/A
	+	N/A
Total monthly payment		$ 532.97

Early Termination. You may have to pay a substantial charge if You end this lease early. The charge may be up to several thousand dollars. The actual charge will depend on when the lease is terminated. The earlier You end the lease, the greater this charge is likely to be.

...ge of Ac...ayne Mall based on our standards for normal use, the schedules and of this lease, unless Yo...

CERTIFICATE OF TITLE FOR A VEHICLE

5430

8,049

[redacted]

VEHICLE IDENTIFICATION NUMBER	YEAR	MAKE OF VEHICLE	TITLE NUMBER
[redacted]	98	FORD	51423018401 FO

BODY TYPE	DUP	SEAT CAP	PRIOR TITLE STATE	ODOM. PROCD. DATE	ODOM. MILES	ODOM. STATUS
CP	0			11/06/97	000010	0

DATE PA TITLED	DATE OF ISSUE	UNLADEN WEIGHT	GVWR	GCWR	TITLE BRANDS
11/06/97	11/06/97				

LESSEE LISA A WATSON

ODOMETER STATUS
0 = ACTUAL MILEAGE
1 = MILEAGE EXCEEDS THE MECHANICAL LIMITS
2 = NOT THE ACTUAL MILEAGE
3 = NOT THE ACTUAL MILEAGE-ODOMETER TAMPERING VERIFIED
4 = EXEMPT FROM ODOMETER DISCLOSURE

TITLE BRANDS
A = ANTIQUE VEHICLE
C = CLASSIC VEHICLE
D = COLLECTIBLE VEHICLE
F = OUT OF COUNTRY
G = ORIGINALLY MFGD. FOR NON-U.S. DISTRIBUTION
H = AGRICULTURAL VEHICLE
L = LOGGING VEHICLE
P = FORMERLY A POLICE VEHICLE
R = RECONSTRUCTED
S = STREET ROD
T = RECOVERED THEFT VEHICLE
V = VEHICLE CONTAINS REISSUED V.I.N.
W = FLOOD VEHICLE
X = FORMERLY A TAXI

REGISTERED OWNER(S)

FORD MOTOR CREDIT CO
4501 CIR 75 PWKY
STE 2200
ATLANTA GA 30339

FIRST LIEN FAVOR OF:

SECOND LIEN FAVOR OF:

If a second lienholder is listed upon satisfaction of the first lien, the first lienholder must forward this Title to the Bureau of Motor Vehicles with the appropriate form and fee.

FIRST LIEN RELEASED _____ DATE

BY _____ AUTHORIZED REPRESENTATIVE

SECOND LIEN RELEASED _____ DATE

BY _____ AUTHORIZED REPRESENTATIVE

MAILING ADDRESS

106000
FORD MOTOR CREDIT CO
4501 CIR 75 PWKY
STE 2200
ATLANTA GA 30339

I certify as of the date of issue, the official records of the Pennsylvania Department of Transportation reflect that the person(s) or company named herein is the lawful owner of the said vehicle.

BRADLEY L. MALLORY
Secretary of Transportation

THIS DOCUMENT CONTAINS A WATERMARK ON THE REVERSE

APPLICATION FOR TITLE AND LIEN INFORMATION

TO BE COMPLETED BY PURCHASER WHEN VEHICLE IS SOLD AND THE APPROPRIATE SECTIONS ON THE REVERSE SIDE OF THIS DOCUMENT ARE COMPLETED.

SUBSCRIBED AND SWORN TO BEFORE ME: MO. DAY YEAR

SIGNATURE OF PERSON ADMINISTERING OATH

SEAL

The undersigned hereby makes application for Certificate of Title to the vehicle described

SIGNATURE OF APPLICANT OR AUTHORIZED SIGNER

PRINT TITLE OF AUTHORIZED SIGNER

When applying for title with a co-owner, these blocks if no block is checked, title will be issued as "Tenants in Common"
A ☐ Joint Tenants with Right of Survivorship (on death of one owner, title goes to the surviving owner).
B ☐ Tenants in Common (on death of one owner, interest of deceased owner goes to his or her heirs or estate).

LIEN DATE: | IF NO LIEN CHECK BOX ☐

FIRST LIENHOLDER

NAME

STREET

CITY

STATE ZIP

LIEN DATE | IF NO LIEN CHECK BOX

SECOND LIENHOLDER

NAME

STREET

CITY

STATE ZIP

00238784

5431

D 96145 120050 White

CERTIFICATE OF ORIGIN FOR A VEHICLE

DATE: AUGUST 29 1997

INVOICE NO.: FJ20050 0

VEHICLE IDENTIFICATION NO.: [redacted]

YEAR: 1998

MAKE: FORD

BODY TYPE: MUSTANG GT 2-DR COUPE

SHIPPING WEIGHT: 3227 LBS.

H.P. (S.A.E.)	G.V.W.R.	NO. CYLS.	SERIES OR MODEL
51.20	N/R	8	P42

I, the undersigned authorized representative of the company, firm or corporation named below, hereby certify that the new vehicle described above is the property of the said company, firm or corporation and is transferred on the above date and under the Invoice Number indicated to the following distributor or dealer.

NAME OF DISTRIBUTOR, DEALER, ETC.

CHRIS KOCH FORD INC

P. O. BOX 1116
TURNERSVILLE NJ 08012

16C048

It is further certified that this was the first transfer of such new motor vehicle in ordinary trade and commerce.

A00710591

MEMO DATA (NOT A LIEN)

FORD MOTOR COMPANY

FINANCE SOURCE 000001

FORD MOTOR CREDIT CO

(SIGNATURE OF AUTHORIZED REPRESENTATIVE)

P O BOX 1732 ROOM

DEARBORN MI

DEARBORN MICHIGAN

48121

(CITY, STATE)

Each undersigned seller certifies to the best of his knowledge, information and belief under penalty of law that the vehicle is new and has not been registered in this or any state at the time of delivery and the vehicle is not subject to any security interests other than those disclosed herein and warrant title to the vehicle.

FOR VALUE RECEIVED I TRANSFER THE VEHICLE DESCRIBED ON THE FACE OF THIS CERTIFICATE TO:

DISTRIBUTION-DEALER ASSIGNMENT NUMBER 1

NAME OF PURCHASER(S): Ford Motor Credit Co.

ADDRESS: 4501 Circle 75 Parkway, Suite 200 Atlanta GA 30339

I certify to the best of my knowledge that the odometer reading is [illegible] No Tenths

DEALER: CHRIS KOCH FORD INC 294720 BY: [illegible]
NAME OF DEALERSHIP DEALER'S LICENSE NUMBER

State of _____

County of _____

Being duly sworn upon oath says that the statements set forth are true and correct. Subscribed and sworn to me before this _____ day of _____ 19____

_____ Notary Public

USE NOTARIZATION ONLY IF REQUIRED IN TITLING JURISDICTION

DISTRIBUTION-DEALER ASSIGNMENT NUMBER 2

NAME OF PURCHASER(S): _____

ADDRESS: _____

I certify to the best of my knowledge that the odometer reading is _____ No Tenths

DEALER: _____ BY: _____
NAME OF DEALERSHIP DEALER'S LICENSE NUMBER

State of _____

County of _____

Being duly sworn upon oath says that the statements set forth are true and correct. Subscribed and sworn to me before this _____ day of _____ 19____

_____ Notary Public

USE NOTARIZATION ONLY IF REQUIRED IN TITLING JURISDICTION

DISTRIBUTION-DEALER ASSIGNMENT NUMBER 3

NAME OF PURCHASER(S): _____

ADDRESS: _____

I certify to the best of my knowledge that the odometer reading is _____ No Tenths

DEALER: _____ BY: _____
NAME OF DEALERSHIP DEALER'S LICENSE NUMBER

State of _____

County of _____

Being duly sworn upon oath says that the statements set forth are true and correct. Subscribed and sworn to me before this _____ day of _____ 19____

_____ Notary Public

USE NOTARIZATION ONLY IF REQUIRED IN TITLING JURISDICTION

DISTRIBUTION-DEALER ASSIGNMENT NUMBER 4

NAME OF PURCHASER(S): _____

ADDRESS: _____

I certify to the best of my knowledge that the odometer reading is _____ No Tenths

DEALER: _____ BY: _____
NAME OF DEALERSHIP DEALER'S LICENSE NUMBER

State of _____

County of _____

Being duly sworn upon oath says that the statements set forth are true and correct. Subscribed and sworn to me before this _____ day of _____ 19____

_____ Notary Public

USE NOTARIZATION ONLY IF REQUIRED IN TITLING JURISDICTION

ODOMETER DISCLOSURE FOR RETAIL SALE

Federal Law requires you to state the odometer mileage in connection with the transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

I certify to the best of my knowledge that the odometer reading is the actual mileage of the vehicle unless one of the following statements is checked. Odometer Reading _____ ☐ 1. Mileage stated is in excess of its mechanical limits. ☐ 2. The odometer reading is not the actual mileage. WARNING ODOMETER DISCREPANCY

Signature(s) of Seller(s) [signature] Date of Statement 4-22-97 Date of Sale 4-22-97

Printed Name(s) of Seller(s) MECHELLE MAIORANO Dealer Title (If Applicable)

Signature of Purchaser(s) [signature]

Printed Name(s) of Purchaser(s) MECHELLE MAIORANO

Company Name (If Applicable) Ford Motor Credit Co. Title of _____

Address of Purchaser(s) [redacted] Circle 75 Parkway, Suite [redacted] Atlanta GA 30339

Being duly sworn upon oath says that the statements set forth are true and correct. Subscribed and sworn to me before this _____ day of _____ 19____

_____ Notary Public

USE NOTARIZATION ONLY IF REQUIRED IN TITLING JURISDICTION

LIENHOLDER

1st lien in favor of _____

whose address is _____

2nd lien in favor of _____

whose address is _____

5433

[-1L (8-86)]
Pennsylvania Department of Transportation
Bureau of Motor Vehicles
Harrisburg, PA 17122

APPLICATION FOR LESSEE INFORMATION

APPLICATION TO ADD CHANGE OR DELETE LESSEE INFORMATION FOR A LEASED VEHICLE

A Application purpose: *(Check appropriate block)*

- ☐ Add Lessee Information — Complete Sections A through F
- ☐ Change Lessee Information - Complete Sections A, B, D (if changed), E (if changed) and F
- ☐ Delete Lessee Information - Complete Sections A, B, and F

B VEHICLE INFORMATION

VEHICLE IDENTIFICATION NUMBER	TITLE NUMBER	REGISTRATION PLATE NUMBER
[redacted]		

C VEHICLE OWNER INFORMATION

LAST NAME OR FULL BUSINESS NAME	FIRST NAME	MIDDLE INITIAL
Ford Motor Credit Co.		

CURRENT STREET ADDRESS: 4501 Circle 75 Parkway, Suite 2200

CITY	STATE	ZIP CODE
Atlanta	GA	30339

D LESSEE INFORMATION PERSON/COMPANY LEASING THE VEHICLE FROM THE VEHICLE OWNER

LAST NAME OR FULL BUSINESS NAME	FIRST NAME	MIDDLE INITIAL
Watson	Lisa	A.

CURRENT STREET ADDRESS: [redacted] Haldeman Avenue

CITY	STATE	ZIP CODE
Phila.	PA	19115

E MAILING INFORMATION

Check the appropriate box to indicate the proper combination		Registration owner — The individual or company who is responsible for paying the registration fee either directly to the Bureau or through the lease agreement.	Application to renew recipient - The individual or company to whom the application for renewal of the vehicle registration will be mailed by the Bureau.	Registration document recipient - The individual or company to whom the registration plate, card, sticker, weight class decal, axle marker and VIN plate will be mailed by the Bureau.
BUREAU USE ONLY	0 ☐	vehicle owner	vehicle owner	vehicle owner
	1 ☐	vehicle owner	vehicle owner	lessee
	5 ☐	vehicle owner	lessee	vehicle owner
	6 ☐	lessee	vehicle owner	lessee
	7 ☐	lessee	lessee	vehicle owner
	2 ☐	lessee	lessee	lessee

NOTE: The title will always be in the name of the owner, and mailed to the owner or encumbrance holder.

F

I certify all information is true and correct.

[signature] Asst.

5434

VEHICLE Ford	VEHICLE IDENTIFICATION NUMBER (VIN). IF TRACING [redacted]	BODY TYPE (SDN, TK, BUS, ETC.) 2DR	MODEL YEAR 98	PURCHASE PRICE (See note on reverse)
GROSS VEHICLE WT. RATING	DIN/MECHANIC #	AUTHORIZED NOTARY PUBLIC OR CERTIFIED INSPECTION MECHANIC (PRINT NAME)		LESS TRADE-IN
☐ DIESEL ☐ ELECTRIC	I certify that I have verified that a legible tracing cannot be secured and that the above VIN is correct. SIGN HERE			TAXABLE AMOUNT

APPLICANT INFORMATION

LAST NAME (OR FULL BUSINESS NAME) Ford Motor Credit Co.	FIRST NAME	MIDDLE INITIAL	DEALER ID NUMBER (IF APPLICABLE)	X 6% (.06) SALES TAX X 7% (.07) PHILA. RES. (See note on reverse)
CO-PURCHASER			DATE ACQUIRED/ PURCHASED 9-27-97	LESS TAX CREDIT
STREET 4501 Circle 75 Parkway, Suite 2200,	CITY Atlanta	STATE GA	ZIP 30339	SALES TAX DUE

NOTE. IF A CO-PURCHASER, OTHER THAN YOUR SPOUSE, IS LISTED ABOVE, CHECK ONE OF THESE BLOCKS. IF NO BLOCK IS CHECKED, TITLE WILL BE ISSUED AS "TENANTS IN COMMON".

A. ☐ JOINT TENANTS WITH RIGHT OF SURVIVORSHIP (ON DEATH OF ONE OWNER, TITLE GOES TO SURVIVING OWNER.)

B. ☐ TENANTS IN COMMON (ON DEATH OF ONE OWNER, INTEREST OF DECEASED OWNER GOES TO HIS OR HER HEIRS OR ESTATE.)

NOTE: IF THE VEHICLE IS BEING LEASED, CHECK THIS BLOCK ☐ . IF BLOCK IS CHECKED, COMPLETE AND ATTACH FORM MV-1L.

1A. Exemption Reason Code (must be a number from 1 to 23 or 0) X2

1B. EXEMPTION NO. 99-653335

ODOMETER INFORMATION

☐ ACTUAL MILEAGE DIFFERS FROM ODOMETER READING FOR REASONS OTHER THAN CALIBRATION ERROR AND ACTUAL MILEAGE IS UNKNOWN

☐ MILEAGE OVER 99,999

ODOMETER READING _ _ _ _ _ 10☒ TENTHS

WARNING: AN INACCURATE ODOMETER STATEMENT MAY MAKE YOU LIABLE FOR DAMAGES TO YOUR TRANSFEREE PURSUANT TO § 409A OF THE MOTOR VEHICLE INFORMATION AND COST SAVINGS ACT OF 1972.

2. TITLE FEE 22.50

3. LIEN FEE

LIEN INFORMATION

1ST LIEN DATE: → IF NO LIEN, CHECK ☐	2ND LIEN DATE: → IF NO LIEN, CHECK ☐
1ST LIENHOLDER None.	2ND LIENHOLDER
STREET	STREET
CITY STATE ZIP	CITY STATE ZIP

4. REGISTRATION OR PROCESSING FEE 36.00

Fee Exempt Number as assigned by the Bureau

VEHICLE INFORMATION

MAKE OF VEHICLE	VIN:	MODEL YEAR
BODY TYPE (SDN, BUS, TK, ETC.)	CONDITION OF VEHICLE ☐ GOOD ☐ FAIR ☐ POOR	

5. DUPLICATE REG. FEE NO. OF CARDS

PASSENGER TAXI/BUS	PASSENGER ☐ TAXI ☐ LIMOUSINE ☐ SCHOOL BUS ☐ MASS TRANSIT ☐ OTHER BUS ☐				SEATING CAPACITY
MOTORCYCLE MOTOR DRIVEN CYCLE	CYLINDER CAPACITY 50CC OR LESS ☐ YES ☐ NO	BRAKE HORSEPOWER ☐ 1.5 OR LESS ☐ 1.6 TO 5.0 ☐ OVER 5.0			
	OPERABLE PEDALS ☐ YES ☐ NO	MAX DESIGN SPEED 25 MPH OR LESS ☐ YES ☐ NO			
	AUTOMATIC TRANSMISSION ☐ YES ☐ NO	DESIGNED/ALTERED FOR ROAD USE ☐ YES ☐ NO			
MOTOR HOME	CHASSIS MFR:	BODY MAKE:			
TRAILER & VEHICLES BELOW	NUMBER OF AXLES:	REG. REGISTERED GROSS WT. (INCLUDING LOAD)			
	SUM OF GAWR'S:	UNLADEN WT. (EMPTY)			
TRUCK TRUCK TRACTOR	REG. REGISTERED GROSS COMBINATION WT.	GROSS COMBINATION WT. RATING			
IMPLEMENT OF HUSBANDRY OR SPECIAL MOBILE EQUIPMENT	☐ SELF-PROPELLED ☐ NOT SELF-PROPELLED (MPH ONLY)	HOW AND WHERE IS VEHICLE USED?			

6. TRANSFER FEE

7. INCREASE FEE

8. REPLACEMENT FEE

9. TOTAL PAID (ADD 1 THRU 8) Send One Check In This Amount → 58.50

ORIGINAL PLATE ✓ Check One

☐ PLATE TO BE ISSUED BY BUREAU (PROOF OF INSURANCE MUST BE ATTACHED.)

☐ EXCHANGE PLATE TO BE ISSUED BY BUREAU

☐ TEMPORARY PLATE ISSUED BY FULL AGENT

TEMP. PLATE NO.

☐ TRANSFER OF PREVIOUSLY ISSUED PLATE

☐ TRANSFER & REPLACEMENT OF PLATE

☐ TRANSFER & RENEWAL OF PLATE

☐ TRANSFER OF PLATE & REPLACEMENT OF STICKER

PLATE NO.

EXPIRES Month Year

REASON FOR REPLACEMENT ☐ LOST ☐ STOLEN ☐ DEFACED ☐ NEVER REC'D (LOST IN MAIL)

NOTE: If "NEVER RECEIVED" block is checked, applicant must complete Form MV-44.

TRANSFERRED FROM TITLE NO. VIN

SIGNATURE OF PERSON FROM WHOM PLATE IS BEING TRANSFERRED (IF OTHER THAN APPLICANT): SIGN HERE RELATIONSHIP TO APPLICANT

INSURANCE INFORMATION

INSURANCE COMPANY NAME: Tem. Assigned Risk Plan

POLICY NO. (OR ATTACH BINDER) binder

POLICY EFFECTIVE DATE 9-29-97

POLICY EXPIRATION DATE 9-29-98

ISSUING AGENT INFORMATION

I CERTIFY THAT ON MONTH _____ DAY _____ YEAR _____ I HAVE CHECKED TO DETERMINE THAT THE VEHICLE IS INSURED AND ISSUED TEMPORARY REGISTRATION TO THE ABOVE APPLICANT, IN COMPLIANCE WITH ALL APPLICABLE PROVISIONS OF THE VEHICLE CODE AND DEPARTMENT REGULATIONS.

ISSUING AGENT (PRINT NAME) AGENT NO.

ISSUING AGENT SIGNATURE TELEPHONE NO. ( )

I/WE ACKNOWLEDGE THAT I/WE MAY LOSE MY/OUR OPERATING PRIVILEGE(S) OR VEHICLE REGISTRATION(S) FOR FAILURE TO MAINTAIN FINANCIAL RESPONSIBILITY ON THE CURRENTLY REGISTERED VEHICLE FOR THE PERIOD OF REGISTRATION. I/WE FURTHER ACKNOWLEDGE THAT I/WE MAY BE SUBJECT TO A FINE NOT EXCEEDING $5,000 AND IMPRISONMENT OF NOT MORE THAN TWO (2) YEARS FOR ANY FALSE STATEMENT THAT I/WE MAKE ON THIS FORM, AND I/WE CERTIFY THAT I/WE HAVE EXAMINED AND SIGNED THIS FORM AFTER ITS COMPLETION; AND, THAT, IF AN EXEMPTION FROM PAYMENT OF SALES TAX IS CLAIMED, I AM/WE ARE AUTHORIZED TO CLAIM THIS EXEMPTION. I/WE FURTHER CERTIFY THAT ALL STATEMENTS HEREIN ARE TRUE AND CORRECT AND MAKE APPLICATION FOR CERTIFICATE OF TITLE FOR THE VEHICLE DESCRIBED IN BLOCK A.

SUBSCRIBED AND SWORN BEFORE ME. MO. DAY YEAR

SIGNATURE OF PERSON ADMINISTERING OATH

SIGN IN PRESENCE OF NOTARY

SIGNATURE OF OWNER OR AUTHORIZED SIGNER Agt.

SIGNATURE OF CO-OWNER/TITLE OF AUTHORIZED SIGNER

TELEPHONE NO 609 272-9000

MESSENGER NUMBER:

5435 ge Option Credit

Bands You may purchase excess miles in Mileage Bands. Each Mileage Band equals 2500 miles. You have purchased N/A Mileage B
duled end of this lease, You may receive a credit of N/A for each completely unused Mileage Band between N/A and N/
s, less any amounts You owe under the lease. You will not receive any credit if the vehicle is destroyed, if You terminate Your lease early, exercise any purc
on, are in default or the credit is less than $1.00. If You use any portion of a Mileage Band You will not receive a credit for that Mileage Band.

Purchase Option at End of Lease Term
$ 13718.90 plus official fees and taxes is Your lease end purchase option price. You have the option to purchase the Vehicle from Lessor in cash for the purchase option price at the end of this lease. You do not have the option to purchase upon default or early termination.

Other Important Terms. See Your lease documents for additic information on early termination, purchase option and maintena responsibilities, warranties, late and default charges, insurance, a any security interests, if applicable.

RESIDUAL VALUE $ 13718.90

This is the projected fair market value of the Vehicle at the scheduled end of this Lease.

TOTAL COST OF THE LEASE
$ 28977.21
(As defined under New Jersey law.)

WARRANTY The Vehicle is covered by any warranty, extended warranty or service contract indicated below:

☒ Standard new Vehicle warranty provided by the manufacturer or distributor of the Vehicle.

☐ _____

If the Vehicle is of a type normally used for personal use and the Lessor, or Vehicle's manufacturer, extends a written warranty or service contract ing the Vehicle within 90 days from the date of this lease, You get d warranties of merchantability and fitness for a particular purpose the Vehicle. Otherwise, You understand and agree that there are no such implied warranties.

OFFICIAL FEES AND TAXES $ 1664.58
The estimated total amount You will pay for official and license fees, registration, title and taxes over the term of Your lease, whether included with Your monthly payments or assessed otherwise.

LESSOR SERVICES N/A
(See Item 2 on back) N/A

LATE PAYMENTS You will pay a late charge on each payment that is not received within 10 days after it is due. The charge is 7.5% of the full amount of the scheduled payment or $50.00 whichever is less.

LIFE, DISABILITY AND OTHER INSURANCE These coverages are not required enter into this lease and will not be provided unless You sign below. If insurance is to obtained by Lessor, the coverages are shown in a notice given to You this date and a for the term of this lease.

Life Insurance
N/A (Insurer) $ N/A (Initial Coverage Amount)
N/A (Insured(s)) $ N/A (Premium)
(Insured's Signature(s))

Disability Insurance
N/A (Insurer) $ N/A (Monthly Coverage)
N/A (Insured) $ N/A (Premium)
(Insured's Signature)

Other Insurance
N/A (Type)
N/A (Insurer) $ N/A (Monthly Coverage)
N/A (Insured(s)) $ N/A (Premium)
(Insured's Signature(s))

Total Premiums $ N/A

mization of Gross Capitalized Cost

ed Upon Value of the 22979.60	Sales/Use Tax and Other Applicable Taxes N/A	Title Fees N/A	License and Registration Fees N/A	Extended Warranty and Service Contract N/A	Lessor Services N/A
sition Fee N/A	Documentation Fee N/A	Life Insurance Premium N/A	Disability Insurance Premium N/A	N/A	Total Gross Capitalized Cost 22979.60

SIGNATURES AND IMPORTANT NOTICES

on. This lease sets forth all of the agreements of Lessor and You for the lease of the Vehicle. There is no other agreement. Any change in this lease must be in writing and signed by You and Ford Credit.

Dora A Watson By: _____ Title: 9/30/97

_____ By: _____ Title: _____

ease before You read it or if it has any blank space to be filled in. (2) You have

5436

	Applicable Taxes + $ N/A	+ $ N/A	Fees + $ N/A	Service Contract + $ N/A	+ $ N/A
	Documentation Fee + $ N/A	Life Insurance Premium + $ N/A	Disability Insurance Premium + $ N/A	+ $ N/A	Total Gross Capitalized Cost = $ 22878.60

SIGNATURES AND IMPORTANT NOTICES

dification: This lease sets forth all of the agreements of Lessor and You for the lease of the Vehicle. There is no other agreement. Any change in this lease must be in writing and signed by You and Ford Credit.

see: Lisa A Watson By: _____ Title: 9/30/97

_essee: _____ By: _____ Title: _____

TICE: (1) Do not sign this lease before You read it or if it has any blank space to be filled in. (2) You have the right to get a filled-in copy of this lease. You state that You have been given a filled-in copy of this lease at the time You sign it and notice of an assignment of this lease by the Lessor to Holder.

TICE: THE LESSEE AND THE LESSOR SHALL BE ENTITLED TO REVIEW THE CONTRACT FOR ONE BUSINESS DAY BEFORE SIGNING THE NTRACT IMMEDIATELY ADJACENT TO THE SIGNATURE LINE OF THE CONTRACT. YOUR SIGNATURE AND THE LESSOR'S CONFIRM THAT YOU /E HAD THIS OPPORTUNITY.

see: Lisa A Watson By: _____ Title: 9/30/97

Lessee: _____ By: _____ Title: _____

CURTIS KOCH FORD INC

sor accepts this lease and assigns it to Holder under the terms of the agreements between Lessor and Holder. ☒ WOR ☐ RPP

sor: _____ By: Patricia Connelly Title: Office Mgr

- 16710-P AUG 97 NOTICE: SEE OTHER SIDE FOR IMPORTANT INFORMATION
/ious editions may NOT be used. ORIGINAL

5437

...cle (a) in violation of any law, (b) contrary to the provisions of ...rance policies covering the vehicle, (c) outside the state where first ...or registered for more than 30 days without Ford Credit's written con...nt, (d) outside the United States, except for less than 30 days in Canada ...e) as a private or public carrier. You will keep this lease and Vehicle free ...liens and encumbrances. You will not assign or sublease any Inter...est in the Vehicle or lease without Ford Credit's written consent.

2. VEHICLE MAINTENANCE AND OPERATING COSTS Proper Vehicle maintenance is Your responsibility. You must maintain and service the Vehicle at Your own expense, using materials that meet the manufacturer's specifications. This includes following the owner's manual and maintenance schedule, documenting maintenance performed, and making all needed repairs. You are also responsible for all operating costs such as gas and oil. Lessor will provide the service(s), if any, identified in the Lessor Services section under the terms of a separate agreement. The manufacturer will invalidate warranty coverage on parts affected by a failure to maintain the Vehicle as required by the manufacturer.
(See Lessor Services on the front of lease)

DAMAGE REPAIR You are responsible for repairs of All Damage which are not a result of normal wear and use. These repairs include, but are not limited to, those necessary to return the Vehicle to its pre-accident condition, including repairs to Exterior Sheet Metal and Plastic Components, and to Vehicle Safety Systems, Including air bag, seat belt and bumper system components. Replacement of Sheet Metal must be made with Original Equipment Manufacturer Sheet Metal. All other repairs must be made with Original Equipment Manufacturer parts or those of equal quality. Discuss this with Your insurance company prior to signing a collision repair estimate or before authorizing any collision repair work.

If You have not had the repairs made before the Vehicle is returned at the scheduled end of this lease, You will pay the estimated costs of such repairs, even if the repairs are not made prior to Holder's sale of the Vehicle.

4. VEHICLE INSURANCE You must insure the Vehicle during this lease. This insurance must be acceptable to Ford Credit and protect You and Holder with (a) comprehensive fire and theft insurance with a maximum deductible amount of $1,000; and (b) collision and upset insurance with a maximum deductible of $1,000; and (c) automobile liability insurance with minimum limits for bodily injury or death of $15,000 for any one person and $30,000 for any one accident, and $5,000 for property damage. These amounts may not be sufficient to cover all Your liabilities. You may wish to consult Your insurance advisor about obtaining additional coverage. You will list the loss payee and additional insured as requested by Lessor. You must give Ford Credit evidence of this insurance.

You authorize Ford Credit, on Your behalf, to receive and endorse checks or drafts, and settle or release any claim under the insurance related to Holder's ownership of the Vehicle. You also assign to Holder any other insurance proceeds related to this lease or Holder's interest in the Vehicle.

LESSOR IS NOT PROVIDING VEHICLE
INSURANCE OR LIABILITY INSURANCE

ENDING YOUR LEASE

T...NATION This lease will terminate (end) upon (a) the end of the te... this lease, (b) the return of the Vehicle to Lessor, and (c) the payment by You of all amounts owed under this lease. Ford Credit may cancel this lease if You default.

RETURN OF VEHICLE If You do not buy the Vehicle, at lease end You must return it to Lessor unless Ford Credit specifies another place. If You fail to return the Vehicle, You must continue to pay the monthly payments plus other damages to Ford Credit, including amounts payable under default. Payment of these amounts will not allow You to keep the Vehicle.

STANDARDS FOR EXCESS WEAR AND USE You are responsible for all ...epairs to the Vehicle that are not the result of normal wear and use. ...hese repairs include, but are not limited to those necessary to repair or ...eplace: (a) Tires which are unmatched, unsafe or have less than 1/8 inch ...f remaining tread in any place; (b) Electrical or Mechanical defects or ...alfunctions; (c) Glass, Paint, Body Panels, Trim and Grill Work that ...re broken, mismatched, chipped, scratched, pitted, cracked, or if applic...ble, dented or rusted; (d) Interior rips, stains, burns or worn areas; and ...) All Damage which would be covered by collision or comprehensive ...surance whether or not such insurance is actually in force. ...eplacement of Sheet Metal must be made with Original Equipment ...anufacturer Sheet Metal. All other repairs must be made with ...riginal Equipment Manufacturer parts or those of equal quality. ...se or repair of the vehicle must not invalidate any warranty.

...e not had the repairs made before the Vehicle is returned at the ...heduled end of this lease, subject to Your right of appraisal, You will pay ...estimated costs of such repairs, even if the repairs are not made prior ...

8. ODOMETER STATEMENT Federal law requires You to complete a statement of the Vehicle's mileage at the end of this lease.

9. VOLUNTARY EARLY TERMINATION You may terminate this lease early, if You are not in default, by returning the Vehicle to Lessor and paying the following: (a) an early termination fee of $200, plus (b) the difference, if any, between the Unpaid Adjusted Capitalized Cost and the Vehicle's Fair Market Wholesale Value, plus (c) all other amounts then due under this lease.

Unpaid Adjusted Capitalized Cost is reduced on each payment due date. It is calculated by reducing the Adjusted Capitalized Cost each month by the difference between the Base Monthly Payment and the part of the Rent Charges earned in that month on an actuarial basis.

Fair Market Wholesale Value, at Your option, will be: (a) an amount agreed to by You and the Lessor, or (b) the value which could be realized at the wholesale sale of the Vehicle, as determined by a professional appraisal obtained by You at Your expense within 10 days from an independent third party agreeable to Ford Credit, or (c) if not established by agreement or appraisal, the net amount received by Ford Credit upon the sale of the Vehicle at wholesale.

DEFAULT AND LOSS OF VEHICLE

FAULT You will be in default if ...

Ford Motor Credit Company

Low Mileage

RCL- DEALER 5438

DEALER NAME: CHRIS KOCH FORD, INC

WOR [X] RPP [ ] | BUSINESS [ ] PERSONAL [X] | APP [ ] ADD [ ] LEASE FACTOR REDUCTION INCREMENT

LESSEE

NAME OF LESSEE: LISA A WATSON

STREET ADDRESS: [redacted] HALDEMAN AVE

CITY: PHILADELPHIA | STATE: PA | ZIP CODE: 19115

COUNTY: N/A | PHONE NO.: [redacted]

GARAGING LOCATION (IF DIFFERENT FROM ABOVE)

STREET | STATE

CITY | COUNTY

LEASE

DATE OF LEASE: 27 SEP 1997 | TERM IN MONTHS: 24

MONTHLY DUE DATE: 10/27/97 | DRIVER LICENSE NUMBER: [redacted]

VEHICLE

YEAR: 98 | MAKE: FORD

MODEL: MUSTANG | LICENSE PLATE NUMBER: N/A

VEHICLE IDENTIFICATION NUMBER: [redacted]

USED VEHICLE MILEAGE: 10

TRADE

YEAR	MAKE	MODEL	NET ALLOWANCE APPLIED TO: CAP COST REDUCTION	SEC. DEPOSIT FIRST PAYT
N/A	N/A	N/A		

TRADE ALLOWANCE	OWES ON TRADE	NET ALLOWANCE		
N/A	N/A	N/A	N/A	532.97

TAX/FEE

	STATE, CITY & OTHER TAXES & FEES	UPFRONT TAXES/FEES: NOT IN CAP COST PAID BY LESSEE	UPFRONT TAXES/FEES: IN CAP COST PAID BY DEALER	EST. AFTER DELIVERY TAXES/FEES: TO BE PAID BY LESSEE	EST. AFTER DELIVERY TAXES/FEES: ON LEASE, TO BE PAID BY DEALER	MONTHLY RENTAL TAX
TOTAL	$ 449.28	$	$ N/A	$	$	

CAPITALIZED COST DATA

1.	VEHICLE INVOICE AMOUNT	$ ~~22078.60~~ N/A	20598.60
2. +	COST OF ADDED EQUIPMENT	~~N/A~~	2280.-
3. +	MARK-UP	N/A	
4. +	SEALANT PACKAGES		22878.60
5. =	AGREED UPON VALUE OF VEHICLE	$ N/A	
6. +	ESP	N/A	
7. +	UPFRONT SALES TAX	N/A	
8. +	INITIAL LIC TITLE, REG.	N/A	
9. +	AD VALOREM TAX	N/A	
+	CREDIT LIFE PREMIUM*	N/A	
+	A & H PREMIUM* BANK FEE	N/A	
13. +	TOTAL EXTRA CAP COST ITEMS	$ N/A	
14. =	GROSS CAPITALIZED COST	$ 22878.60	
15. -	NET TRADE-IN ALLOWANCE FOR CAP COST REDUCTION	$ N/A	
16. -	CASH DOWN	2017.75	
17. -	REBATES	N/A	
18. =	TOTAL CAP COST REDUCTIONS	$ (2017.75)	
19. =	ADJUSTED CAPITALIZED COST	$ 20860.85	

* FOR MANUAL CREDIT LIFE &/OR A/H CALCULATION (1) DETERMINE ADJUSTED CAP COST WITHOUT PREMIUM(S). (2) RE-CALCULATE CAPITALIZED COST WITH PREMIUMS(S)

PAYMENT DATA

LEASE CHT. NO. 11.50 ~~9.50~~ | LEASE TERM 24

35.	ADJUSTED CAP COST* (LINE 19)	20860.85	ADJUSTED CAP COST
36. +	VEHICLE PRICE (LINE 5)**	N/A	x FACTOR N/A = N/A
			LOCAL FEE
37. +	ACTUAL LEV (LINE 34)	13718.90	x FACTOR 61.00 =
			LEV
			x FACTOR 484.52 = ( )
38. =	BASE PAYMENT (35 PLUS 36 MINUS 37)	$ N/A	
39. +	LOCAL FEE	484.52	
40. =	BASE MONTHLY PAYMENT W/O TAX	$ N/A	
41. +	MONTHLY SERVICE POLICY FEE	3.91 N/A	
42. +	MONTHLY VEHICLE INSURANCE FEE	N/A	
43. +	OTHER CHARGES	0.51	
44. =	TOTAL MONTHLY PAYMENT W/O TAX	488.94 $ N/A	
45. +	MONTHLY RENTAL RECEIPTS TAX	43.03	
46. =	TOTAL MONTHLY PAYMENT	$ 532.97	

* USE 'NET CAP COST WITHOUT PREMIUM(S)' IF AMOUNT APPEARS IN LINE 10 OR 11.

** ONLY COMPLETE LINE 36 IF THERE IS A LOCAL FEE AND THE LEASE INCLUDES CREDIT LIFE OR A&H

EXCESS DEFERRED GROSS

47.	ACTUAL LEV (LINE 34)	$
48. -	MAX. ALLOWED LEV (LINE 33)	( )
49. =	EDG LEV (IF NEGATIVE, ENTER 0)	$
50.	VEHICLE PRICE (LINE 5)	$
51. -	TOTAL CAP COST REDUCTIONS (LINE 18)	( )
52. -	TOTAL MSRP (LINE 24) (GRV)	( )
53. =	EDG MARK-UP (IF NEGATIVE, ENTER 0)	$
54	STD. SEC. DEP. (LINE 46 ROUNDED-UP TO NEXT $25 IF NOT EVENLY DEVISABLE BY $25)	$
55. -	ACTUAL SECURITY DEPOSIT	( )
56. =	EDG SECURITY DEPOSIT (IF NEGATIVE, ENTER 0)	$
57. =	TOTAL EDG (49 PLUS 53 PLUS 56)	$

MAX LEV

20	VEHICLE MSRP	$ 22490.00	
21 -	APPROVED ADDED EQUIP & MARK-UP	N/A	
22 -	NO-CHARGE/PEP DISCOUNT/ SPECIAL PROM. OPTIONS	N/A	
23 +			22490.00
24 =	TOTAL MSRP	$	61.00
25 x	LEV PERCENTAGE/INCLUDE MILEAGE BAND% REDUCTION	59+2	
26 =	MAXIMUM LEV	$	13718.90

EXTRA MILES

27	CUSTOMER MONTHLY MILEAGE	1000	24 MO.	24,000
28 -	MAXIMUM MONTHLY MILEAGE ALLOWANCE	1,000	24 MO.	(24,000)
29 =	EXTRA MILEAGE (27 MINUS 28)			N/A
30 x	CHARGE PER EXTRA MILE/BAND% REDUCTION			N/A
31 =	LEV REDUCTION (29 X 30)			$ N/A
	WEAR & TEAR REDUCTION			( )
	MAXIMUM ALLOWED LEV (26 MINUS 31 MINUS 32)			13718.90
	ACTUAL LEV			$ 7141.95
	LEV REDUCTION			$ 4486.53
	LEV PERCENTAGE			

ADVANCE

58	ADJUSTED CAP COST (LINE 19)	$ 20860.85
59. -	SECURITY DEPOSIT (LINE 55*)	(N/A)
60. -	FIRST MONTHLY PAYMENT (LINE 46 ABOVE)	(532.97)
61. -	STANDARD DEFERRED GROSS (NOT APPLICABLE FOR WOR)	( )
62. -	EXCESS DEFERRED GROSS	( )
63. -	UP-FRONT TAXES/FEES REMITTED BY FORD CREDIT	( )
64. -	REMAINING APP PYMT. OBLIGATION/OTHER	(20327.08)
65. =	FORD CREDIT ADVANCE	$

* STANDARD SECURITY DEPOSIT IS ONE MONTHLY PAYMENT ROUNDED UP TO THE NEXT $25 INCREMENT

* MEDIUM/HEAVY TRUCK SEC. DEPOSIT IS TOTAL OF 2 MONTHLY PAYMENTS FOR COMMERCIAL FLEETS AND 4 MONTHLY PAYMENTS FOR INDIVIDUAL OWNER-OPERATORS ROUNDED UP TO NEXT $25 INCREMENT.

ITEMIZED UP-FRONT TAXES AND FEES

FEE'S DESCRIPTION	TAX RATE %	INCLUDED IN ADJUSTED CAP COST ($)	NOT IN ADJUSTED CAP COST PAID BY LESSEE

TAX ON CASH DOWN AND REBATES APPLIED AS CASH			
TAX ON TRADE IN			
SPECIFY OTHERS:			

IS THIS A LEASE RENEWAL? ☐ YES ☐ NO NUMBER OF LEASE RENEWALS NOT INCLUDING THIS LEASE? _____

WORKSHEET COMPLETED BY: SC DATE 9/24/97

DOCUMENT CHECK-LIST

☐ COPY OF FACTORY INVOICE	☐ VEHICLE TITLE/REG. OR COPY OF APPLICATION	☐ LEASE AGREEMENT	☐ FHUT DECLARATION
☐ ADDED EQUIPMENT INVOICE	☐ INSURANCE EVIDENCE FOR VEHICLE AND CREDIT LIFE/A& H	☐ LESSEE/CUSTOMER STATEMENT	☐ GUARANTY ADDENDUM _____
☐ TAX RECEIPT OR EXEMPT CERT.	☐ MAINTENANCE AGREEMENT ESP APPLICATION OR CERTIFICATE	☐ DEALER ASSIGNMENT	☐ OTHER _____

AMENTS OR SPECIAL INSTRUCTIONS

177 AUG 97 *Previous Editions May NOT Be Used*

Ford Dealer/Ford Credit Use Only

BRANCH

Based Upon Value of the Vehicle	Sales/Use Tax and Other Applicable Taxes	Title Fees	License and Registration Fees	Extended Warranty and Service Contract	
$ 22878.	+ $ N/A	+ $ N/A	+ $ N/A	+ $ N/A	+ $ N/A
Acquisition Fee	**Documentation Fee**	**Life Insurance Premium**	**Disability Insurance Premium**		**Total Gross Capitalized Cost**
$ N/A	+ $ N/A	+ $ N/A	+ $ N/A	+ $ N/A	= $ 22878.60

SIGNATURES AND IMPORTANT NOTICES

Modification: This lease sets forth all of the agreements of Lessor and You for the lease of the Vehicle. There is no other agreement. Any change in this lease must be in writing and signed by You and Ford Credit.

Lessee: Lisa a Watson By: _____ Title: 9/30/97

Co-Lessee: _____ By: _____ Title: _____

NOTICE: (1) Do not sign this lease before You read it or if it has any blank space to be filled in. (2) You have the right to get a filled-in copy of this lease. You state that You have been given a filled-in copy of this lease at the time You sign it and notice of an assignment of this lease by the Lessor to Holder.

NOTICE: THE LESSEE AND THE LESSOR SHALL BE ENTITLED TO REVIEW THE CONTRACT FOR ONE BUSINESS DAY BEFORE SIGNING THE CONTRACT IMMEDIATELY ADJACENT TO THE SIGNATURE LINE OF THE CONTRACT. YOUR SIGNATURE AND THE LESSOR'S CONFIRM THAT YOU HAVE HAD THIS OPPORTUNITY.

Lessee: Lisa a Watson By: _____ Title: 9/30/97

Co-Lessee: _____ By: _____ Title: _____

Lessor accepts this lease and assigns it to Holder under the terms of the agreements between Lessor and Holder. ☒ WOR ☐ RPP

Lessor: CURTIS KOCH FORD INC By: Patricia Connelly Title: Finance Mgr

FC - 16710-P AUG 97
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NOTICE: SEE OTHER SIDE FOR IMPORTANT INFORMATION

ORIGINAL

Applicant's EXHIBIT #19

5440

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F ENO 1 0

VOLUNTARY STATEMENT
(NOT UNDER ARREST)

Lisa A. Watson am not under arrest for, nor am I being detained any criminal offenses concerning the events I am about to make known to S/A K.M. MEARS / S/A B.W Darne. I understand I am free to walk away without saying anything, and I volunteer the following information of my own free will, for whatever purposes it may serve.

I am 32 years of age, and I live at [redacted] Lamar Place Phila Pa

I can ~~cannot~~ read and write and completed the 12th grade in school. DOB: [redacted]

[redacted] PH [redacted] 71(215)

I met (Joey Carey) later na on Bryan R Alexey on Sept 15 1997 at prox he called me at my house on Sept 15 at 9:30 pm. He wanted me to come over I said no later that week we went on a date. Me and my husband were getting ~~a~~ separated. He was in my house going through my file cabin. When ask he said no. He called a lest 3 times a day. He said he need me to co sign for a car because he had no credit so I did. On Sept 27 1997 I was to pay the car off. He got 75 dollars of my husband And 3.00 dollars another. On Sept 28 1997. He put a gun to my head because I say I was not going to co sign. He said Ona I said he was sorry. In Sept 29 me & my 3 kids went to stay. I was never in the car at all. On 2nd I went to the 15th to meet him. Then called my husband and he was going to pay off the car. Then then he need to my husband to car. He was stolen and he would trash it. My husband said no I'm sorry he told was all my husband credit cards for a total 95 cards. On Sept 29 Joey said he shot someone and a bureau

have read each page of this statement consisting of 2 page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct.

This statement was completed at 1:20 P M. on the 21st day of January, 1998

Lisa A Watson
Signature of person giving volu

SWORN TO AND SUBSCRIBED TO BEFORE ME THIS 21st DAY OF Jan, 19 98

Terence M. Darnell
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 2/25/1998

WITNESS:

WITNESS:

Applicant's EXHIBIT #20

I certify that I have been given a copy of this statement consisting of 2 pages.

Lisa A Watson

VOLUNTARY STATEMENT

SUPPLEMENTAL

Lisa Watson

Statement of, Continued.

Because they would not get out of his way I was mad with him at the time. He told me this over the phone. Brews gun was black, it had a black pellet on the end of the gun. I did go to Chris bar and in New Jersey and sign papers but I did not know I was releasing the White Mustang. I thought I was co-signing for him. When I met him he was driving a green Mustang. He said the green Mustang had a trans-problem and ask me to pick him. He said he sold it for 9,000 dollars. I never seen were it was left but it was around the corner from his apartment - [redacted] Hallman, live [redacted] in Phila Pa 19114.

Person giving statement to place initials behind last word of statement as appears on last page.

Lisa A Watson

Signature of person giving voluntary statement

5443 WATSON, LISA A
[redacted] HALDEMAN AVE
PHILA, PA 19115

Printed 01-14-98 12:

Res: [redacted]71 Emp Ind:
Emp: [redacted]31 Ext:

Acct Nbr: [redacted]
Age: 32 Product: RCL
Days Delq: 78

Payment History

<11

Account Message(s): 2
Skip
No Insurance

	Date	Amount	Balance
Due:	10/27/97	$1,707.90	$24,862.86
Last Paid:	10/02/97	$532.97	

Principal Due: $1,598.91
Late Charges Due: $108.99
Oth Due:

Credit Life: No
Disability: No

Emp: SUPERFRESH SUPER MKT

Term: 24 Pmts: $532.97
Made: 1 >30: >60:
Nbr of Ext: Ret Chks:
Collateral: 1998 FORD MUSTG
VIN/SN: 1FAFP42X6WF120050
Color:
Key Codes:
Lic Plate: State:
Cobuyer:
Phone:
Address:

01/14/98 10:38 BC FCCJT03 (Permanent) Review FUD: 01/15/98 tt unit, taking care of today
01/14/98 09:00 BC FCSPL05 No Attempt FUD: 01/14/98 JON HAS SUBPEONA AND WILL SND OUT ALL INFO TO POLICE TDAY DURING NON PRIME TIME TO GET THIS PROB RESOLVED
01/13/98 17:13 BC FCCJT03 (Permanent) Receive Mail Other/Third Party Collections Delinquency Undetermined Other FUD: 01/14/98 HAVE OFFICIAL SUBPOENA, WILL GIVE TO UNIT FOR FILE
01/13/98 10:48 BC FCVCW01 (Permanent) Review FUD: 01/13/98 rev
01/12/98 19:08 BC FCJAV02 (Permanent) Review FUD: 01/13/98 CONTINUE TO FOLLOW CLOSELY. SEE ME IF ANY DELAYS PAST 1/26/98>>>
01/12/98 08:17 BC FCSPL05 No Attempt FUD: 01/10/98 INFO RELEASED TO POLICE DEPT IN SC,,,,HOPEFULLY WILL HAVE UNIT OUT OF POUND SOON,,,,,WILL CHK W CJT ON UTD INFO
01/09/98 15:27 BC FCCJT03 (Permanent) Review FUD: 01/10/98
01/09/98 15:14 BC FCCJT03 (Permanent) Receive Call Local Counsel Collections Delinquency Undetermined Other FUD: 01/10/98 tt yvonne abela, adv ok to cooperate and release info to police dept
01/09/98 08:57 BC FCCJT03 (Permanent) Telephone Other Local Counsel Collections Delinquency Undetermined Left Message To Call FUD: 01/10/98 TT TAPE, ADV CIRCUM AND NEED TO KNOW IF OK TO RELEASE INFO TO POLICE DEPT
01/09/98 08:55 BC FCSPL05 No Attempt FUD: 01/08/98 TT CJT WILL FOLLOW W VICKI TDAY,,,,,,NEED TO GET UNIT OUT OF POUND IN SC,,,,,,,
01/07/98 14:47 BC FCCJT03 (Permanent) Telephone Other Other/Third Party Collections Delinquency Undetermined Left Message To Call FUD: 01/08/98 called for vikki, and lmtc to find out if ok to release info
01/07/98 14:47 BC FCCJT03 (Permanent) Sent Fax Local Counsel Collections Delinquency Undetermined Other FUD: 01/08/98 sent fax to legal to verify if ok to release info
01/07/98 11:03 BC FCJXE05 (Permanent) Receive Call Other/Third Party Collections Delinquency Undetermined Other FUD: 01/08/98 verified fax # for solicitor.....requested we express mail info from subpoena.....
01/07/98 10:23 BC FCJXE05 (Permanent) Receive Call Other/Third Party Collections Delinquency Undetermined Other FUD: 01/08/98 recvd call from officer darnell.....sd will fax subpoena....sd car is in impound and he will call us when it can be released to us.....
01/07/98 09:08 BC FCCJT03 (Permanent) Review FUD: 01/08/98 tt unit, is on top of
01/07/98 08:22 BC FCJXE05 Telephone Other Other/Third Party Collections Delinquency Undetermined Left Message To Call FUD: 01/08/98 called officer Darnell.....lmtc on voice mail.....
01/06/98 07:38 BC FCJAV02 (Permanent) Review FUD: 01/07/98 KEEP ON TOP OF THIS ONE-CALL BACK AND HAVE THEM SEND SUBPEONA TO ATTN OF CSS. THIS COULD DRAG ON FOR AWHILE IF WE DO NOT SHOW THEM THIS IS A PRIORITY TO US.
01/05/98 16:52 BC FCCJT03 (Permanent) Review FUD: 01/07/98

Applicant's EXHIBIT #21

01/05/98 16:39 BC FCCJT03 (Permanent) Review FUD: 01/07/98 keep me informed
01/05/98 15:20 BC FCSPL05 (Permanent) No Attempt FUD: 01/07/98 REVWED PREV COMMNTS HAVE UNIT IMPOUNDED IN SC UNDER INVESTIGATION FR A TP DRIVING UNIT INVOLVED IN A MURDER OF A SC STATE POLICE OFFICER,,,,,,
01/05/98 15:20 BC FCSPL05 Follow-Up Date 01/07/98
01/02/98 16:16 BC FCJXE05 (Permanent) Receive Call Other/Third Party Collections Delinquency Undetermined Other FUD: 01/03/98 recvd call from Officer Darnell.....verified vin # on unit they have in posession.....sd they are holding and will call when able to release to fmcc.....sd they want to search one more time....tp asked if fmcc will give them everything we have on accnt.....checked w/ csr sr....adv officer they will have to subpoena info.....sd they will do.....sd person driving unit being held for the murder of SC state trooper.....
01/02/98 14:44 BC FCJXE05 (Permanent) Telephone Other Other/Third Party Collections Delinquency Undetermined Left Message To Call FUD: 01/03/98 called officer darnell at 803 554 7396....sd tp in custody.....sd will have officer darnell call back.....
01/02/98 13:08 BC FCJXE05 (Permanent) Telephone Other Other/Third Party Collections Delinquency Undetermined Other FUD: 01/03/98 called 803 737 9000... tp sd call officer 803 554 7396.....
01/02/98 12:49 BC FCMJH13 (Permanent) Receive Call Buyer/Lessee Collections Delinquency Undetermined Other FUD: 01/03/98 unit impounded in SC at 803-554-7396...can contact state trooper george darnell at 803-737-9000...tp driving unit in costody for shooting state trooper after being pulled over for speeding....unit was forced off road by policy causing damage to front left of unit...est damage unknown...b can not recover unit from SC...sd was never in possession of unit that had no ins and only knew tp for 3wks from gas station...claims forced to keep quiet about thru strong arm tactic by tp
12/29/97 08:52 BC FCJXE05 Telephone Other Outside Contractor Collections Collections Delinquency Undetermined Other FUD: 12/30/97 tt DVR.... sd car still has not shown up but will continue to look for .....
12/23/97 09:27 BC FCPMC02 (Permanent) Telephone Buyer Residence Busy FUD: 12/19/97
12/22/97 14:34 BC FCPMC02 (Permanent) Initial File Review FUD: 12/19/97 WORKED ON THIS MOST OF THE MORNING:::::TT/ LISA WATSON;;;TT/DLR;;FRED DANIELLO::::(SALESMAN);;ALSO ATTEMPTED TO TT/DET COSGROVE FALLS TWP::JOSEPH BARKLEY HAS BEEN CONTACTED ANS ASKED TO COME IN FOR INTERVIW:::CUST NEVER SHOWED;;;THER WILL BE WARRANTS OUT FOR HIM BUT IN MEANTIME DET COSGROVE OUT ON DISAB TILL END OF JAN 98;;THIS WILL SIT TILL HE COMES BACK:::::::TT/LISA WATSON;;AGREED TO FAX ME PHONE BILLS SHOWING NUMEROUS NEW YORK ##'S::::ATTEMPTED TO LOCATE JOSPEH BARKLEY VIA FAST DATA:::HAVE 2 POSSIBLES;;;HAVE TO CONTINUE FURTHER TOMORROW::::
12/22/97 12:07 BC FCJXE05 (Permanent) Receive Mail Other/Third Party Collections Delinquency Undetermined Other FUD: 12/23/97 recvd ret mail from [redacted] Hlademan Ave, PH1, PA 19115.....
12/19/97 17:00 BC FCPMC02 (Permanent) Initial File Review FUD: 12/19/97 WILL CONTINUE ON THIS FIRST THING MONDAY MORNING::::WE DID NOT RUN CREDIT ON FRED DANIELLO::CHECKD WITH ANYLST:::::NOTHING IN SYSTEM:::WILL CONTINUE ON MONDAY::::
12/19/97 16:58 BC FCPMC02 (Permanent) Telephone Other Insurance Company Collections Delinquency Undetermined Other FUD: 12/19/97 CHECKD BACK WITH INS AGENCY;;;THEY NEVER ISSUED INS TO ANY DANIELLO::::ALSO CALLINGF STATE FARM FOR COPY OF CUST'S CHECK::::CUST BOUNCED CHECK FOR INS COVERAGE:::::
12/19/97 16:53 BC FCPMC02 (Permanent) Initial File Review FUD: 12/19/97 GOING THRU FILE:::FOUND NAME OF FRED DANIELLO::::###::::WITH PHONE$#####215 632 8771:::## GOES TO ANDREW WATSON [redacted] LAMAR PL PHILA PA::::::
12/17/97 12:42 BC FCPMC02 (Permanent) Initial File Review FUD: 12/16/97 ALSO CUST PAID 3000. TO DLR:::HOW??? CUST ALSO PAID 1581 TO THE INS AGENT:::HOW::::NEED TO SEE IF CUST BOUNCED DOWNPYMNT:::::
12/17/97 12:41 BC FCPMC02 (Permanent) Initial File Review FUD: 12/16/97 DISCUSSED WITH UNIT::::::CUST NEVER SENT US COPY OF THE POLICE REPORT ;;; CUST ALSO MADE STMNTS THAT THE DLR WAS AWARE OF THIS AT THE TIME:::::NEED TO CHEKC WITH DLR;;;;SEE IF THEY HAVE APPLICATION ON JOEY BARCLAY::::ALSO CHECKED FILE:::CUST GIVES ADDRESS OF 6 YRS;;;;DRIVERS LIC GIVES OTHER ADDRESS::::::LIC ISSUED 5/20/97:::::::::::IF CONTRACT IS COMPLETE FRAUD AS PARTY STATES;;;THIS CAR HAS EITHER BEEN CHOPPED OR ON BOAT HEADING FOR OVERSEAS.::::ATTEMPTING TO CONTACT POLICE DEPT DISTRICT 8::::WANT TO SEE IF CUST REALLY FILED REPORT;;;
12/17/97 12:32 BC FCPMC02 (Permanent) Initial File Review FUD: 12/16/97
12/17/97 11:47 BC FCJXE05 (Permanent) No Attempt FUD: 12/16/97 getting skip sheet

and giving file to skip unit.....
12/16/97 15:58 BC FCCJT03 (Permanent) Review FUD: 12/16/97 code acct skip, we do not know where location is, third party in possession
12/11/97 18:17 BC FCJXE05 (Permanent) Telephone Other Other/Third Party Collections Delinquency Undetermined Other FUD: 12/12/97 718 777 3456..rings to some kind of advertisement recording....
12/11/97 18:16 BC FCJXE05 (Permanent) Telephone Buyer Residence Buyer/Lessee Collections Delinquency Undetermined Other FUD: 12/12/97 tt b... adv fmcc will garnish her wages and issue replvn if do not recover collateral....sd she knows..sd knowbody wants to find barclay more than her..asked for info on Barclay.. sd does not have other than address in screen.. did give apt# of [redacted] b....sd Barclay stole grlfrnd's cell phone... called a lot of #'s..... called [redacted]56..... [redacted]73..... [redacted]63.. [redacted]65..... [redacted]06..... [redacted]22.....adv fmcc will not garnish his wages.. will garnish hers...adv she is aware and wants to find b....before hung up b sd "do not go anywhere Joe".....sd different Joe.....
12/11/97 09:27 BC FCJXE05 Follow-Up Date 12/11/97
12/11/97 09:27 BC FCJXE05 (Permanent) Telephone Buyer Residence No Answer FUD: 12/12/97
12/11/97 09:25 BC FCJXE05 (Permanent) Receive Call Outside Contractor Collections Collections Delinquency Undetermined Other FUD: 12/12/97 recvd call from agent...sd made contact w/ b....sd b gave him the story of reporting car stolen and saying where she thinks car is....sd she had attitude of not really her problem anymore.....agent gave # for police 8th district PHL 215 686 3080.....
12/11/97 09:25 BC FCCJT03 (Permanent) Review FUD: 12/11/97
12/11/97 09:25 BC FCCJT03 (Permanent) Telephone Buyer Residence No Answer FUD: 12/11/97
12/10/97 16:57 BC FCJXE05 Telephone Buyer Residence Busy FUD: 12/11/97
12/10/97 15:39 BC FCJXE05 Telephone Buyer Employer Sister Collections Delinquency Undetermined Left Message To Call FUD: 12/11/97 tt sis..... adv have sister call asap.....
12/10/97 15:38 BC FCJXE05 (Permanent) Telephone Buyer Residence Busy FUD: 12/11/97
12/10/97 15:36 BC FCJXE05 (Permanent) Receive Call Outside Contractor Collections Collections Delinquency Undetermined Other FUD: 12/11/97 recvd call from Jerry at DVR.. sd streets given by b on last call run parrallel to each other.. do not intersect...sd went to the [redacted] Lamar Pl address for b hr after fmcc talked to b at address... sd b's and sister's units at address and no one wld answer the door....adv to cont to try to make contact....
12/10/97 13:21 BC FCSPL05 (Permanent) Receive Call Outside Contractor Repo Collections Delinquency Undetermined Other FUD: 12/11/97 RC FRM JERRY AT DVR,,,SAID NOTHING SHOWING AT AREA WHERE C SAID UNIT IS AT,,,,,JERRY SAID THE 2 CROSS STREETS ACADEMY AND WALDEMER ARE NOT EVEN CLOSE TO EACH OTHR,,,,ADV DVR TO KNOCK ON C DOOR AND GET THE STRY STRAIT FRM THIS C,,,,,,
12/10/97 12:21 BC FCJAV02 (Permanent) Review FUD: 12/11/97 F/U FOR CONCLUSION TODAY
12/10/97 11:02 BC FCSPL05 (Permanent) Telephone Other Outside Contractor Repo Collections Delinquency Undetermined Other FUD: 12/11/97 TT DVR ADV THEM OF WHAT C SAID AND WIL GET A DRIVER RIGHT ON THIS NOW
12/10/97 11:01 BC FCSPL05 (Permanent) Telephone Buyer Residence Buyer/Lessee Collections Delinquency Undetermined Other FUD: 12/11/97 C SAID UNIT ACCROSS THE STREET FRM FIREHOUSE ON ACADEMY/WALDEMER RD,,,,,C SAID VIN # IS COVERED AND WINDOWS TINTED,,,,,TP MAN C SAID WAS BFRIEND SAID UNIT IS THERE NOW,,,,,ADV C OF STATUS OF ACCNT AND FUT LEGAL PROB,,,,,C SAID IS AWARE OF RESPOND,,,,,,C SAID UNIT IN FRNT OF HOUSE IN DRIVEWAY IN DUPLEX AREA,,,,,,,,
12/09/97 10:50 BC FCCJT03 (Permanent) Review FUD: 12/09/97 MAKE SURE BUYER UNDERSTANDS THAT JOE BARCLAY IS NOT THE PERSON GOING TO BE SERVED A REPLEVIN IF UNIT DOES NOT SHOW UP, HE IS NOT THE ONE WHO WILL HAVE HIS WAGES DOCKED, MAKE SURE THAT BUYER IS EDUCATED ON ALL ALTERNATIVES TO REPOSSESSION IN ORDER FOR FMCC TO RECOVER COLLATERAL
12/08/97 10:08 BC FCSPL05 (Permanent) Telephone Other Outside Contractor Repo Collections Delinquency Undetermined Other FUD: 12/09/97 TT JERRY AT DVR,,,,,SAID DRIVERS FOUND NOTHING OVER WKEND W NEW INFO GIVEN,,,,ADV TP AGAIN TO GO OVER NEW INFO GIVEN AND KNOCK ON DOORS TO FIND THIS UNIT,,,,TP WILL CLL BCK W INFO
12/08/97 09:09 BC FCCJT03 (Permanent) Review FUD: 12/06/97
12/05/97 15:54 BC FCJAK08 (Permanent) Review FUD: 12/06/97
12/05/97 09:14 BC FCJXE05 (Permanent) Telephone Other Disconnected FUD: 12/06/97 not in srvc 215 678 8934.....

12/05/97 09:13 BC FCJXE05 (Permanent) Telephone Other Answering Machine Collections Delinquency Undetermined Left Message To Call FUD: 12/06/97 called Mike Watson [redacted]34....

12/05/97 09:11 BC FCJXE05 (Permanent) Telephone Other Outside Contractor Collections Collections Delinquency Undetermined Other FUD: 12/06/97 tt agent... adv agent of new info... agent pointed out that comly addresses are on crdt app...Joe Matckici brother [redacted]34 [redacted] Comly Rd... Mike Watson [redacted]34 [redacted] Comly rd.....adv agent to make contact.....

12/05/97 09:08 BC FCJXE05 (Permanent) Telephone Buyer Residence Buyer/Lessee Collections Delinquency Undetermined Other FUD: 12/06/97 tt b.. claims saw unit at apartment complex off of Comly and Academy...sd does not know name of complex... sd does not know address...sd had p.i. run tag# on unit and came up as a '96 mustang "registered to some girl"..sd will take fmcc's agent over there... b sd funny that unit was registered at same time her unit was taken....adv b seriousness of situation... adv fmcc will take necessary steps to receive pmnt... b sd does not wrk lives on chld support....adv b no one ever picks up at # for police given.. sd has had no contact w/ Joey Barclay...

12/04/97 11:34 BC FCJXE05 (Permanent) Receive Mail Other/Third Party Collections Delinquency Undetermined Other FUD: 12/05/97 recvd ret mail from [redacted] Haldeman Ave, Phl, Pa 19115.....insufficient address and apartment #.....

12/04/97 11:18 BC FCJXE05 (Permanent) Telephone Other Outside Contractor Collections Collections Delinquency Undetermined Other FUD: 12/05/97 tt agent... agent sd no tickets came up on the tag#....

12/04/97 10:25 BC FCJXE05 (Permanent) Telephone Other No Answer FUD: 12/05/97 called # for police.. no answer 215 686 8305.....

12/04/97 10:22 BC FCJXE05 (Permanent) Telephone Other Other/Third Party Collections Delinquency Undetermined Left Message To Call FUD: 12/05/97 called detective Causwell pr investigater b sd has hired to find Barclay ph# 215 949 9116.....

12/04/97 10:15 BC FCJXE05 (Permanent) Telephone Buyer Employer Other/Third Party Collections Delinquency Undetermined Other FUD: 12/05/97 tt sis.... sd b shld be there later..... adv t ohave b call asap..

12/04/97 10:13 BC FCJXE05 (Permanent) Telephone Buyer Residence No Answer FUD: 12/04/97

12/03/97 09:40 BC FCJAV02 (Permanent) Review FUD: 12/04/97 DISC. W/ UNIT-AGENT HAS ALL POSSIBLE ADDRS.-CONTINUE TO TRY AND MAKE CONTACT WITH CUSTOMER-IF AGENT DOES NOT SEE UNIT BY 12/5-HAVE HIM MAKE CONTACT AND ALL ADDRS.

12/03/97 09:52 BC FCCJT03 (Permanent) Review FUD: 12/04/97 OUT FOR REPO

12/03/97 09:19 BC FCJXE05 Telephone Buyer Employer Answering Machine Collections Delinquency Undetermined Left Message To Call FUD: 12/04/97 tt tape.. adv call asap.....

12/03/97 09:18 BC FCJXE05 Telephone Buyer Residence Busy FUD: 12/04/97

12/03/97 09:18 BC FCJXE05 (Permanent) Telephone Other Outside Contractor Collections Collections Delinquency Undetermined Other FUD: 12/04/97 tt Jery gave tag#....

12/03/97 09:16 BC FCJXE05 (Permanent) Telephone Dealer Dealer Collections Delinquency Undetermined Other FUD: 12/05/97 tt dlr.. first sd Chris Koch had taken all of his files then researched and found tag#... sd tags had been sent back to them because Pa address was incorrect... tag# BMJ1566.....

12/03/97 09:16 BC FCJXE05 Follow-Up Priority from Low to High

12/02/97 15:10 BC FCSPL05 Receive Call Outside Contractor Repo Collections Delinquency Undetermined Other FUD: 12/03/97 RC FRM JERRY FRM DVR FR JXE FR TAG #,,,,REP HAS CLL OUT TO DLR FR # ADV JXE WILL CLL DVR WHEN # RECD

12/02/97 10:54 BC FCJXE05 Telephone Dealer Other/Third Party Collections Delinquency Undetermined Other FUD: 12/03/97 tt dlr... sd will have to call back w/ tag#.....

12/01/97 13:22 BC FCSPL05 (Permanent) Receive Call Dealer Collections Delinquency Undetermined Other FUD: 12/03/97 GAVE KEY CODE OF 0823X

12/01/97 13:11 BC FCJXE05 (Permanent) Telephone Other Outside Contractor Collections Collections Delinquency Undetermined Other FUD: 12/03/97 gave key code of 0823x

12/01/97 13:03 BC FCJXE05 (Permanent) Telephone Other Outside Contractor Collections Collections Delinquency Undetermined Other FUD: 12/03/97 called agent.. adv them to go ahead w/ account.. high priority....

12/01/97 11:42 BC FCNEI01 (Permanent) No Attempt FUD: 11/27/97 Located title. title in file. Returned file to Cris T.

12/01/97 09:33 BC FCCJT03 (Permanent) Review FUD: 11/27/97 tt admin, will be researching at 11am

11/26/97 11:53 BC FCCJT03 (Permanent) Review FUD: 11/27/97 NO TITLE, NEED TO FIND OUT WHERE CAN BE, WILL CHECK WITH ADMIN WITH UNIT

11/25/97 17:20 BC FCJAV02 (Permanent) Review FUD: 11/26/97 F/U A.M. WHY AGENT

STOPPED

11/25/97 16:35 BC FCJXE05 Telephone Other Outside Contractor Collections Collections Delinquency Undetermined Other FUD: 11/26/97 tt agent.. adv to hold off on processing.....

11/25/97 16:30 BC FCJXE05 (Permanent) No Attempt FUD: 11/26/97 ran fst data on both ph#'s.. not offered by phone co...

11/25/97 15:44 BC FCJXE05 (Permanent) No Attempt FUD: 11/26/97 also sd still has no idea where Joe Barey is...

11/25/97 15:42 BC FCJXE05 (Permanent) Telephone Buyer Residence Buyer/Lessee Collections Delinquency Undetermined Other FUD: 11/26/97 tt b.. cnfrmd ss# [redacted] sd her home address is [redacted] Lamar Pl, Philadelphia, PA 19154..... sd tp name spelled "joe Barey".. sd [redacted] Haldeman ave is his address... sd he moved out day after took unit...

11/25/97 15:13 BC FCJXE05 (Permanent) Telephone Buyer Employer Sister Collections Delinquency Undetermined Left Message To Call FUD: 11/26/97 tt sis... epn is sister's rpn.... [redacted] [redacted]31.....sd Lisa is living at her house...

11/25/97 13:38 BC FCJXE05 Add To Contractor Log FUD: 11/26/97 Other - dvr - Repossession

11/25/97 13:21 BC FCVCW01 (Permanent) Approve Repo FUD: 11/26/97 NO INS/ OK USE OF AGNT / OK SELF HELP/ LETS GET THIS ONE B4 A PROBLEM

11/25/97 08:37 BC FCCJT03 (Permanent) Approve Repo FUD: 11/21/97 no insurance on unit, third party poss in possession of unit, first payment default, agree repo

11/24/97 15:53 BC FCJXE05 (Permanent) Request Repo FUD: 11/21/97 no insurance... admitted fraud by b and possible skip...

11/24/97 15:32 BC FCCJT03 (Permanent) Review FUD: 11/21/97 based on info, and no insurance and poss skip, lets get this submitted immed

11/24/97 08:18 BC FCJXE05 (Permanent) Telephone Buyer Residence No Answer FUD: 11/21/97

11/20/97 11:14 BC FCJXE05 (Permanent) Telephone Dealer Dealer Collections Delinquency Undetermined Other FUD: 11/21/97 tt Fred at Chris Koch.. asked if remembered Lisa Watson.. sd she was present when unit purchased.. sd signed and filled out app and signed lease... sd had valid liscence and ins.... sd when b came into lease unit Joey Barclay was present... sd at time b sd Barclay was nephew.... sd b called back some time later and clmd unit stolen.. sd b clmd Barclay had paid b to get loan for him... dlr now sd b referred to Barclay as cousin.....

11/20/97 11:04 BC FCJXE05 (Permanent) Telephone Buyer Employer Buyer/Lessee Collections Delinquency Undetermined Other FUD: 11/21/97 tt b.. adv no insurance and no clm.. adv no answer at #'s for police... sd has police report.. adv to fax copy of police report.. adv b that she is responsible for unit.. b sd that all info on credit app is false.. sd has no job.. sd never wrked at Super Fresh.. sd dlr Fred was present when Barclay told b she was cb.... sd cannot make pmnts on vehicle... clmd she did not call back w/ clm#... person in backround was telling b what to say... sd dealer knows Barclay better than her...

11/20/97 10:49 BC FCJXE05 (Permanent) Telephone Buyer Residence No Answer FUD: 11/21/97

11/20/97 10:47 BC FCJXE05 (Permanent) Telephone Other Insurance Company Collections Delinquency Undetermined Other FUD: 11/21/97 called 610 358 7000... sd no clm.. sd policy was cancelled 9/29/97....tt Mia.. did a conferenced call w/ Veronica at agency and now Veronica acknowldged that policy cancelled.....

11/20/97 10:32 BC FCJXE05 (Permanent) Telephone Other Insurance Company Collections Delinquency Undetermined Other FUD: 11/21/97 tt agent's office.. sd b's policy is "assigned risk... sd clm is handled at 610 358 7000.... policy# b359434c2938.. sd clm# given by b is incorrect....

11/20/97 10:18 BC FCJXE05 (Permanent) Telephone Other No Answer FUD: 11/21/97 called the other # for police given by b....no answer.....215 949 9116

11/20/97 10:14 BC FCJXE05 (Permanent) Telephone Other No Answer FUD: 11/20/97 called # for police for verification 215 686 8305.....no answer

11/19/97 15:47 BC FCSPL05 (Permanent) Telephone Buyer Residence Buyer/Lessee Collections Delinquency Undetermined Other FUD: 11/20/97 C SAID TP JOEY BARGAY AT [redacted] HALDEMAN AVE PHILA PA WHO IS SUB LEASING APT STOLE UNIT,,,,,UNIT HAD KEYS,,,ALL INFO AND CREDIT CARDS INSIDE,,,,,C SAID TP HAS STOLEN APPROX $22000 FRM CRED CRDS AND CRED CARD CO ARE INVESTIGATING ACCNT FR THEFTS,,,, C SAID TEMP TAG ON UNIT #BMJ15666,,,C SAID FILED POLICE REPORT W 8TH DISTRICT PHIAL POLICE 215 686 8305 W OFFICER SMITH POL REPORT # 7032 ON 11 13 97,,,,ADV C THAT OTHER REP CLLD INSUR CO AND VF INSUR ON UNIT LST WK,,,,C SAID THAT SHE THOUGHT SHE WAS A CO SIGNER OF ACCNT NOT THE BUYER AND TP WAS KEEPING INSUR ON UNIT,,,,ADV C TO

CLL STATE FARM AND CLL BCK TOMM,,,,ADV C STILL RESPONSIBLE FR PYMNT ON ACCNT
11/18/97 17:26 BC FCJXE05 (Permanent) Telephone Buyer Employer Other/Third Party Collections Delinquency Undetermined Left Message To Call FUD: 11/19/97 tt Heather, is daughter of b's best friend.. epn is best friend's #.... sd if sees Lisa will dlvr mssg...
11/18/97 17:23 BC FCJXE05 (Permanent) Telephone Buyer Residence No Answer FUD: 11/14/97
11/18/97 17:01 BC FCSPL05 Telephone Buyer Residence Busy FUD: 11/14/97
11/18/97 16:33 BC FCSPL05 (Permanent) Telephone Buyer Residence Busy FUD: 11/14/97
11/13/97 16:07 BC FCKJS06 (Permanent) Receive Call Buyer/Lessee Collections Delinquency Undetermined Other FUD: 11/14/97 GAVE CLAIM# 6863080...SD UNIT STOLEN AND THAT INSURANCE WAS CANCELED WHILE AGO..ADV IF REP HAS ANY ADDTL QUESTIONS HE WILL CALL
11/13/97 13:35 BC FCJXE05 (Permanent) Receive Call Spouse Collections Delinquency Undetermined Other FUD: 11/14/97 recvd call from tp man claiming to be lisa's husband.... sd everythin lisa tld me is true... sd Lisa filed clm w/ state farm... sd wld cll back w/ clm #...
11/13/97 11:13 BC FCJXE05 (Permanent) Telephone Buyer Residence Buyer/Lessee Collections Delinquency Undetermined Other FUD: 11/14/97 tt b.. adv that she has full cvrg on vehicle per ins co.. sd she did not realize... sd Barclay must have taken out ins in her name.. sd Barclay has her liscence and cr cards.. asked her intentions... b asked what she should do...adv to call ins co.. sd husband on way over.. sd will call back after talks to ins co and when husband arrives.....
11/13/97 11:04 BC FCJXE05 (Permanent) Telephone Other Insurance Company Collections Delinquency Undetermined Other FUD: 11/14/97 verified ins. w/ Veronica at State Farm.. sd ded $500 comp and collision... ph# [redacted]00....
11/13/97 10:57 BC FCJXE05 (Permanent) No Attempt FUD: 11/14/97 also sd no case # w police but cal detective Causwell 215 949 9116..
11/13/97 10:52 BC FCJXE05 (Permanent) Telephone Buyer Residence Buyer/Lessee Collections Delinquency Undetermined Other FUD: 11/14/97 tt b.. sd a lot of different things.. seemed at times to be making up as went along... sd has not seen unit since Barclay drove off of lot.. sd she has reported car stolen.. sd has private detectives looking for unit.. sd Barclay clld her and was going to pay car off when previously sd had not heard from Barclay... sd his phone turned off.. sd his aprtmnt abandoned... sd his address is address listed on accnt... [redacted]Haldeman Ave, Phla, Pa, apt [redacted].. sd her address is [redacted] lamar pl., philly,pa. 19154... sd does not know if she had ins on unit... sd ins that barclay had on unit cancelled because he did not make pmnt... sd Barclays tole she and her husband's cc, first sd crgd $11,000 and later sd $12,000.. sd does not know how she got apprvd since no job.. adv b in meantime neds to maintain accnt.. sd cannot because has no job.. adv get $ from husband who she caims is car salesman.. she then sd they have been separated for a yr.. will pull file and call b back...
11/13/97 09:52 BC FCCJT03 (Permanent) Review FUD: 11/12/97 unit to work thru today
11/11/97 13:15 BC FCJXE05 (Permanent) No Attempt FUD: 11/08/97 will discuss w/ cjt and follow up....
11/11/97 12:55 BC FCJXE05 (Permanent) Telephone Buyer Residence Busy FUD: 11/08/97
11/10/97 10:24 BC FCJAV02 (Permanent) Review FUD: 11/08/97 ADVISE CJT TO DISCUSS W/REP AND CSS
10/15/97 10:35 BC FCAJA02 (Permanent) Receive Call Buyer/Lessee Collections Delinquency Undetermined Other tt b...claims unit is in possession of Joey Barclay...she thought she was the co-signer, adv no and that he not even on acct...she claims detective from paul's twp called her about unit, wouldn't elaborate...she hasn't seen Joey for > 2 wks...she wanted us to locate unit and repo, adv not in default so can't do...unit is registered in her name thru DMV...adv need to contact police

5449

Bayan Alaska Conference Call w/ Duvette 3-30-98

- When Gloria & him were together she took two checks from her job & opened an account Mercant Bank in PA, N.C. Philadelphia $26,000.00 total of the two checks.
- Call Al Parks Trade Printed Company in Manhattan, NY 26th St. 11th Ave (Manager)
- Call Telecheck: find out what bad checks Driver's License [redacted] PA
- Summerville Suites Mobile Shade, NJ talk to Paul
- Also Jr Gloria has an account in Beaufort, S.C. Checking account
- Chris ~~Estate~~ cashed check at Trump Casino in Atlantic City, NJ.
- National Processing Center
- Bayan sent letter to Mr. Stone, & diagrams wants us to get together with him.

Applicant's EXHIBIT #22

CALL The lawyers AND tell them 1) ASAP

1) Pictures of my car vette

2) Pictures of ellen and my ~~Ford~~ explor. give them the Plate # [redacted]

3) Your credit Report. Yes mom I don't Know how.

4) ~~Negatives~~. Negtives.

5) Comcast telPhone Bill ABOUT 100 Pages on SARAS Pho

6) hotels Bills ~~From~~ Summerville suites in maple Shade

7) Westin in PhilA, Bills. Hotal Westen. Suites.

8) Also they have the Checks that Glory Stole ~~From~~ her JOb about 30 Company Checks. Doctor ~~Bowers~~. Checks Trenton N.J.

9) SARA Cash A Check ~~for~~ 330.00 Dollors ~~FOR~~ Glory. At her JOB ~~GIANT~~ GIANT super market.

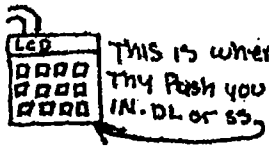
10) Black Bag with CDthes.

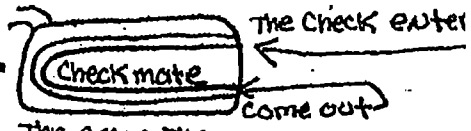
11) A credit card with MY Picture UNDER. Michael Batkilina, AND ID. 233 Penns Park PA. Wrightown, PA P.O. Box

12) Picture of You mom

Applicant's EXHIBIT 33-A

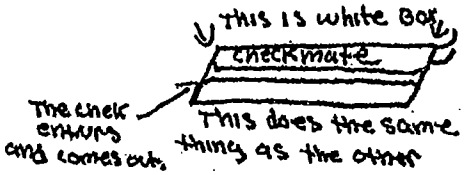
5451 Glory Blackwell has a checking acct in Beaufort.S.C. Highway 301
Bank is MCAB or something that has those letters. Call Summerville Suits Motal
n maple Shade N.J. Ask For PAUL. She wrote checks there for the Room. one check was
or $947.00, $50, $400.00 Dollers. Thats with tele✓check check writing service.
lso with N.P.C. National Processing Center. She wrote a check for $700. Dollers at A.C. New Jerse
ASICO and an Trump TAJ MAL. Now understand that when you use a check writing service such as
elA✓check, S.C.A.N., N.P.C., You need a Drauer licnce # or a S.S. card, Passport, NON Drauer ID,
r Service ID. like Army, Navy, marines, coast garad, etc. They run a check thorgh a machine there
re 3 types of machines. They First Run the Check through a machine then the casher has to
ype your ID # Number in. The you get a approved. If you are not approved It shows a code.
s Discribe Below!



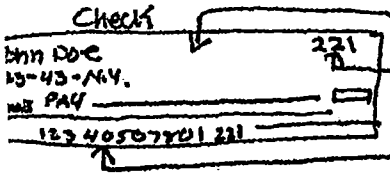


This scans the Checking acct # number on the check Its a white little machine.

Tele✓check - The machine looks like this. -



Tele✓ codes:
ode 3 means need wfo.
ode 4 means theres a hold
n your acct or Bad checks are
eing wrote. means call customer service.
Ny time a code come up the have to call
ustomer Services. Now Telecheck can call to the Bank where your acct is AT to make sure you have
oney in your acct Before they approve your check. It depends on the amount of the check the check num
F your check number is Below 300 lets say they would call to the Bank. Remember telecheck or N.P.C.
'SCAN can give a approval over the phone. Call one of these places to get the Number if you are no
re. Penske Truck Rental in New York 26st and 11th Ave Ask for call, Call Summerville Suites Motal in maple
ade. New Jersey. NOTE This when you write a check at the store they ask for your Drauer lic#

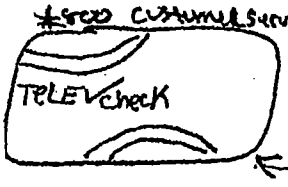


I hope this helps
By a Mely

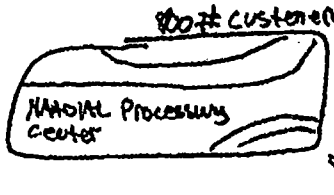
Applicant's EXHIBIT 23-B

9lso call N.P.C. National Processing center Also known as Comchek. Call Trump TAJ MAL in
tlantic New Jersey or Sands Casco, or Tramp Plaza. To get the telephone numbers.
r Check under Check Cashing in the yellow Pages.

Erez Glorywee DL # 25[redacted] or 24[redacted] PA. SS.# 158[redacted] or 158-[redacted]
Not sure
Blackwell Glorywee. Marines ID# is SS Number.



White and red Sticker on Doors of Stores and Department stores,



The sticker is light Blue and white. At stores Doors and Regs

Dear, Mr Stone & Mr. Sims... April, 19, 1998

I have heard that many inmates was asked by Captain: Snowden IF they would sign statements on me. This was told to me on Friday Mr Stone the day after you saw me. Can you call here and tell the captain you need for me to call you on Tuesdays. That way I can call my mom and tell her to give you any info I may ~~Had~~ have for you. Also I will give you the names of some of the inmates. 1. Nasim Musa Shahid Amaru Jeter, SCDC #233526 His lawyers number is 1-864-232-8400. Also Robert Koon cell 64, William Richbourg S.C.D.C. #5083-Cell 55, Also cells, 11, 12, They were asked by the Captain and Warden. I think they signed statements. It was told to me that they would lie to get there time cut in half. Please see IF you can get me transfered Please. Also did you check on Glory about Tony & Cathy. I know that Mr Darnell SIED has total bills with her number on them. Call the Westin Suites where I stayed in Phila P.A. The westin Suites on Island ave by the Phila Int natial Airport. The Room was 732 under Mr. Vince Black or Michael Toscani get the Bill from them. Also I was with Glory at the Summerfield Suites in maple Shade New Jersey. We stayed there under Gloryvee Blackwell. Also stayed at motel 6 in maple Shade N.J. Under Justin Maticki. The last place we said we were at before we left for FIA. was Jacitch Inn. I maple Shade N.J. I stayed There under Michael Toscani, But the reg has Gloryvee Blackwell. These hotals have the Phone numbers I called when she was with me. and she called also. We stayed in Cherry hill N.J. one week ~~was~~ it was Xmas we at Residence Inn on Route 70 Cherry hill N.J. Under Gloryvee Blackwell. She used her Miltery I.D.

over con't ⇒(1)

Applicant's EXHIBIT 93-C

As for as my mother and me you need to speak to ellen mr stone. And you need to speak to sarha also mr stone. they can tell you about how my mom and I got a long. Also speak to ellens mother and Father, Please what ever you hear don't think bad about her mr steve. Please!
Why is sied asking me about 1. How I met glory. (2.) and about sarha, and about theresa mccann, They have pictures of me in my belt in new York, ~~[illegible]~~ I also went out with a girl Name BiBi mohan, This was in 1994. Only IF this comes up. And I went out with a girl named Cathy Vicari in 1990, Just ~~[illegible]~~ letting you know. IF you see the names you will know. Did you call mr ende my lawyer in N.Y? I wanted to ask you but I for got. Im I going to take A ite decter test? Am I going on the stand? what are my chances of not Being found not Guilty? I was Just asking because when you came to see me. You said that the Jury must see if you can Deal with prison life. That to me says I going to die? I am scared mr stone. Sorry? I don't know what to think. I know you say its very important to keep focus. Its hard mr stone. And it does scare me that with a case like this Mr Sims did not come. I wish he would have came. Anyway Please stay in contact with my mom. Please.

P.S. have a nice day
say hello to tina Please.



Thank you
always
Bayan
4-19-98.

Motor Vehicle Services NEW JERSEY

FOR IDENTIFICATION ONLY

CLASS I

[redacted] EXPIRES 01-31-1999

DOMINGA PEREZ

[redacted] LACLEDE AVE APT [redacted]

TRENTON NJ 08609

SEX EYES HT ISSUED

F BRN 5-04 01-18-1995

X

JM [redacted] INI 6.00

UNITED STATES UNIFORMED

EXPIRATION DATE 2001APR02

SPONSOR SERVICE / STA USMC/AD

SPONSOR RANK / PAY GI CPL/E4

SPONSOR SSN [redacted]

SOCIAL SECURITY NUMBER [redacted] RELATIONSHIP SP

SIGNATURE Gloryvee Blackwell SPONSOR BLACKWELL MARCUS C

BLACKWELL GLORYVEE AUTHORIZED PATRONAGE EXCHANGE COMMISSARY

IDENTIFICATION AND PRIVILEGE CARD

BENSALEM CHECK CASHING

(215) 639-8082

NAME Gloryvee Perez

SIGNATURE Gloryvee Perez

DATE 11/95

Preferred Customer Card

SOCIAL SECURITY

[redacted]

THIS NUMBER HAS BEEN ESTABLISHED FOR

GLORYVEE PEREZ

gloryvee Perez

SIGNATURE

PENNSYLVANIA DRIVER'S LICENSE

[redacted]



Issued 10/23/96 Birth Date [redacted] Expires 09/30/00

Sex F Height 5'04" Eyes BRO

Class C Endorsements ---

Com./Med. Restrictions 'F'

[redacted] KNIGHTS RD

APT [redacted]

BENSALEM PA 19020

GLORYVEE PEREZ

Gloryvee Perez

Applicant's EXHIBIT #24

MEMBER IDENTIFICATION CARD

MCAS Beaufort Federal Credit Union

Present this card when you conduct any business at the Credit Union

NAME GLORYVEE BALCKWELL

MEMBER NUMBER [redacted]

Gloryvee Blackwell

MEMBER'S SIGNATURE

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF ORANGEBURG)	C.A. No. 01-CP-38-628
BAYAN ALEKSEY, #5059)	
)	
Petitioner,)	
v.)	**AFFIDAVIT OF**
)	**MARCUS BLACKWELL**
)	
STATE OF SOUTH CAROLINA)	
)	
Defendant.)	
)	
)	

I, Marcus Blackwell , being duly sworn, do state:

1. I am currently a resident of Seal Beach, California. I am currently in the Navy.

2. My parents live in Reidsville, North Carolina. My mother is Elizabeth Blackwell.

3. I was married to Ms. Gloryvee Perez from 1996-1998. At that time, I was in the United States Marine Corps. We separated in October, 1997. One child, Mercedes Blackwell, was born to our marriage. During our marriage, Gloryvee claimed that she and her sister, Dominga Perez, looked so much alike that they could pass for twins.

4. During the course of knowing Ms. Perez, I found her to have a violent temper and an untruthful character. Specifically, one night during our marriage, Gloryvee was shooting a pistol in our residential neighborhood. Also, she kicked our automobile windshield hard enough to crack it during an argument following a dinner date. Finally, she never informed me of her prior marriage. At the custody proceedings in Orangeburg County's Family Court, I learned she was never divorced from her first husband before our marriage.

5. In June of 1998, I met with an investigator employed by Mr. Aleksey's trial counsel. I explained to him everything I knew about Ms. Perez, including her instances of lying and violent activity. Also, I discussed the case with Tina Lawing, Mr. Duffie Stone's paralegal, on August 19, 1998.

9. I came to Orangeburg, South Carolina for Mr. Aleksey's trial, at the request of Mr. Aleksey's trial attorneys. My mom and I met with these attorneys in a hotel in Orangeburg during Mr. Aleksey's trial. They told my mom and me to remain in the hotel unless they called us. We were never called to testify at the trial.

Applicant's EXHIBIT #25

10. I make this statement of my own free will, absent any coercion or duress.

Marcus Blackwell

Dated: Nov 7, 2002

11/7/02

Notary Signature

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF ORANGEBURG)	C.A. No. 01-CP-38-628
BAYAN ALEKSEY, #5059)	
)	
Petitioner,)	
v.)	**AFFIDAVIT OF**
)	**ELIZABETH BLACKWELL**
)	
STATE OF SOUTH CAROLINA)	
)	
Defendant.)	
)	
)	

I, Elizabeth Blackwell , being duly sworn, do state:

1. I am currently a resident of Reidsville, North Carolina.

2. I have a son named Marcus Blackwell. My son was married to Ms. Gloryvee Perez.

3. I first met Ms. Perez the weekend of July 4, 1996, prior to their marriage. Ms. Perez lived with me for an occasion before 1998.

4. Ms. Perez contacted me on January 1, 1998. She informed me that she was in a jail cell in Orangeburg, South Carolina. When I expressed concern for her legal situation, Ms. Perez replied, "They can not charge two people for the shooting." I have notes I recorded, dated January 1, 1998, documenting this statement.

5. Because of Ms. Perez' incarceration, I was given physical custody of Gloria Mai Rivera, Ms. Perez' daughter from a previous marriage, and Mercedes Blackwell, Ms. Perez' daughter and my grandaughter, by the Family Court in Orangeburg, South Carolina. Both of these girls lived with me, in North Carolina, prior to Mr. Aleksey's trial.

6. When I first spoke with Gloria Mai Rivera, I asked her, "Did you see who was driving the car when the officer was shot." Gloria Mai responded, "I woke up when I heard shooting. Mommy told me 'Michael was driving.'" I repeatedly asked her if she saw who was driving and she never said anything other than, "Mommy told me 'Michael was driving.'" Again, I took notes documenting this conversation and I still have those notes today.

7. Over the course of time that I knew Ms. Gloryvee Perez, I found her to be an untruthful person. (I would have testified to this during Mr. Aleksey's trial in 1998, if I would have been called to testify.)

Applicant's EXHIBIT #27

8. In June of 1998, I met with an investigator employed by Mr. Aleksey's trial counsel. I explained to him everything I knew about Ms. Perez, including her instances of lying and violent activity.

9. I came to Orangeburg, South Carolina for Mr. Aleksey's trial, at the request of Mr. Aleksey's trial attorneys. My son and I met with these attorneys in a hotel in Orangeburg during Mr. Aleksey's trial. They told my son and me to remain in the hotel unless they called us. We were never called to testify at the trial.

10. I make this statement of my own free will, absent any coercion or duress.

Elizabeth Blackwell

Elizabeth Blackwell

Dated: Nov. 8, ,2002

Jennifer D. Whitehall 11/8/02

Notary Signature

My commission expires: February 27, 2005

5459

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF ORANGEBURG)	C.A. No. 01-CP-38-628
BAYAN ALEKSEY, #5059)	
)	
Petitioner,)	
v.)	**AFFIDAVIT OF**
)	**ELIZABETH BLACKWELL**
)	
STATE OF SOUTH CAROLINA)	
)	
Defendant.)	
)	

I, Elizabeth Blackwell , being duly sworn, do state:

1. I am currently a resident of Reidsville, North Carolina.

2. I have a son named Marcus Blackwell. My son was married to Ms. Gloryvee Perez.

3. I first met Ms. Perez the weekend of July 4, 1996, prior to their marriage. Ms. Perez lived with me for an occasion before 1998.

4. Ms. Perez contacted me on January 1, 1998. She informed me that she was in a jail cell in Orangeburg, South Carolina. When I expressed concern for her legal situation, Ms. Perez replied, "They can not charge two people for the shooting." I have notes I recorded, dated January 1, 1998, documenting this statement.

5. Because of Ms. Perez' incarceration, I was given physical custody of Gloria Mai Rivera, Ms. Perez' daughter from a previous marriage, and Mercedes Blackwell, Ms. Perez' daughter and my grandaughter, by the Family Court in Orangeburg, South Carolina. Both of these girls lived with me, in North Carolina, prior to Mr. Aleksey's trial.

6. When I first spoke with Gloria Mai Rivera, I asked her, "Did you see who was driving the car when the officer was shot." Gloria Mai responded, "I woke up when I heard shooting. Mommy told me 'Michael was driving.'" I repeatedly asked her if she saw who was driving and she never said anything other than, "Mommy told me 'Michael was driving.'" Again, I took notes documenting this conversation and I still have those notes today.

7. Over the course of time that I knew Ms. Gloryvee Perez, I found her to be an untruthful person. (I would have testified to this during Mr. Aleksey's trial in 1998, if I would have been called to testify.)

8. In June of 1998, I met with an investigator employed by Mr. Aleksey's trial counsel. I explained to him everything I knew about Ms. Perez, including her instances of lying and violent activity.

9. I came to Orangeburg, South Carolina for Mr. Aleksey's trial, at the request of Mr. Aleksey's trial attorneys. My son and I met with these attorneys in a hotel in Orangeburg during Mr. Aleksey's trial. They told my son and me to remain in the hotel unless they called us. We were never called to testify at the trial.

10. I make this statement of my own free will, absent any coercion or duress.

Elizabeth Blackwell

Elizabeth Blackwell

Dated: Nov. 8, ,2002

Jennifer D. Witzell 11/8/02

Notary Signature

My commission expires: February 27, 2005

5461

RECEIPT FOR PROPERTY	SLED CASE NUMBER
S.C. LAW ENFORCEMENT DIVISION	LOCATION
Name of Person Property is Obtained From ☐ *Owner* ☐ *Other*	Address *(Includes Zip Code)*
Location of Property	
Purpose for Which Obtained	

Item Nr.	Quantity	DESCRIPTION OF ARTICLES
1	1	

I Certify That I Have Received The Articles Listed Above

Date	Name	Signature

CHAIN OF CUSTODY

ITEM NR	DATE	RELINQUISHED BY	RECEIVED BY	PURPOSE OF CHANGE OF CUSTODY
		Name Signature	Name Signature	
		Name Signature	Name Signature	
		Name Signature	Name Signature	
		Name Signature	Name Signature	

Applicant's EXHIBIT 28

SUMMERFIELD SUITES® HOTEL

SUMMERFIELD SUITES HOTEL
000 CRAWFORD PLACE
MT. LAUREL, NJ 08054
[redacted]

****
* 5462
* FOLIO *
* *
****

[redacted] Page: 1
[redacted] Departure: [redacted]
Room Number: [redacted]
Suite Rate: 130.00

	Date	Description		Amount	Tax
Payment:	12/14/97	CASH 400.00 CASH DEPOSIT		-964.60	0.00

118,00 - x 8, $944.00

$1040 x 8

Applicant's EXHIBIT #29

Total -964..

THANK YOU CHOOSING SUMMERFIELD SUITES HOTEL!
FOR FUTURE RESERVATIONS DIAL 1-800-833-4353

BALANCE DUE ▶ [redacted] -964..

RECYCLED PAPER

For reservations, please call 800-833-4353.

5463

SUMMERFIELD SUITES Hotels

	Date	Description							Amount	Tax
Phone call:	12/14/97	2157338405	on	12:14	at	16:08	for	1 mn	2.25	0.13
Phone call:	12/15/97	9150524340	on	12:14	at	22:55	for	1 mn	2.25	0.14
Phone call:	12/15/97	2157338405	on	12:15	at	02:24	for	5 mn	2.25	0.20
Phone call:	12/15/97	2157338405	on	12:15	at	11:29	for	7 mn	2.25	0.20
Phone call:	12/15/97	2157338405	on	12:15	at	11:29	for	6 mn	3.00	0.18
Phone call:	12/15/97	2343435	on	12:15	at	12:25	for	2 mn	0.50	0.03
Phone call:	12/15/97	9839200	on	12:15	at	20:07	for	1 mn	0.50	0.03
Phone call:	12/15/97	2346020	on	12:15	at	20:38	for	1 mn	0.50	0.03
Phone call:	12/15/97	2346020	on	12:15	at	20:36	for	1 mn	0.50	0.03
Phone call:	12/15/97	3860084	on	12:15	at	20:45	for	1 mn	0.50	0.03
Phone call:	12/16/97	8660111	on	12:16	at	11:22	for	7 mn	0.50	0.03
Phone call:	12/16/97	8660111	on	12:16	at	11:07	for	1 mn	0.50	0.03
Phone call:	12/16/97	9839200	on	12:16	at	11:09	for	1 mn	0.50	0.03
Phone call:	12/16/97	3860084	on	12:16	at	11:10	for	1 mn	0.50	0.03
Phone call:	12/16/97	8660111	on	12:16	at	11:15	for	5 mn	0.50	0.03
Phone call:	12/16/97	2343435	on	12:16	at	12:35	for	1 mn	0.50	0.03
Phone call:	12/16/97	9839200	on	12:16	at	12:37	for	1 mn	0.50	0.03
Phone call:	12/16/97	2343435	on	12:16	at	12:54	for	1 mn	0.50	0.03
Phone call:	12/16/97	3860084	on	12:16	at	12:56	for	1 mn	0.50	0.03
Phone call:	12/16/97	3860084	on	12:16	at	13:00	for	3 mn	0.50	0.03
Phone call:	12/16/97	2155935200	on	12:16	at	13:14	for	1 mn	2.25	0.14
Phone call:	12/16/97	2155935200	on	12:16	at	15:20	for	6 mn	3.50	0.21
Phone call:	12/16/97	9839200	on	12:16	at	15:21	for	1 mn	0.50	0.03
Phone call:	12/16/97	4455070	on	12:16	at	15:41	for	4 mn	0.50	0.03
Phone call:	12/16/97	2157338405	on	12:16	at	19:45	for	1 mn	2.25	0.14

BALANCE DUE ▶

RECYCLED PAPER

For reservations, please call 800-833-4353.

SUMMERFIELD SUITES HOTEL

	Date	Description						Amount	Tax
Phone calls	12/16/97	9839200	on	12:16	at	18:31	for 3 mn	0.50	0.03
Phone calls	12/16/97	7273967	on	12:16	at	18:45	for 5 mn	0.50	0.03
Phone calls	12/16/97	9839200	on	12:16	at	17:51	for 1 mn	0.50	0.03
Phone calls	12/16/97	2343435	on	12:16	at	18:00	for 2 mn	0.50	0.03
Phone calls	12/16/97	2343435	on	12:16	at	18:20	for 8 mn	0.50	0.03
Phone calls	12/16/97	2156761200	on	12:16	at	19:28	for 8 mn	4.00	0.24
Phone calls	12/16/97	9469650	on	12:16	at	17:49	for 3 mn	0.50	0.03
Phone calls	12/16/97	4245617	on	12:16	at	19:58	for 1 mn	0.50	0.03
Phone calls	12/16/97	6677100	on	12:16	at	20:02	for 2 mn	0.50	0.03
Phone calls	12/16/97	6953729	on	12:16	at	21:55	for 37 mn	0.50	0.03
Phone calls	12/17/97	3966191	on	12:17	at	06:52	for 1 mn	0.50	0.03
Phone calls	12/17/97	3966191	on	12:17	at	07:23	for 2 mn	0.50	0.03
Phone calls	12/17/97	9833600	on	12:17	at	08:41	for 2 mn	0.50	0.03
Phone calls	12/17/97	7221600	on	12:17	at	08:47	for 4 mn	0.50	0.03
Phone calls	12/17/97	2349560	on	12:17	at	09:32	for 1 mn	0.50	0.03
Phone calls	12/17/97	4289858	on	12:17	at	09:34	for 1 mn	0.50	0.03
Phone calls	12/17/97	9832771	on	12:17	at	10:00	for 5 mn	0.50	0.03
Phone calls	12/17/97	2458830	on	12:17	at	10:14	for 4 mn	0.50	0.03
Phone calls	12/17/97	2156464431	on	12:17	at	10:31	for 4 mn	3.00	0.18
Phone calls	12/17/97	2156374805	on	12:17	at	10:34	for 2 mn	2.50	0.15
Phone calls	12/17/97	9839200	on	12:17	at	11:03	for 1 mn	0.50	0.03
Phone calls	12/17/97	2155989982	on	12:17	at	11:12	for 2 mn	2.50	0.15
Phone calls	12/17/97	411	on	12:17	at	14:32	for 2 mn	0.50	0.03
Phone calls	12/17/97	3964011	on	12:17	at	14:36	for 5 mn	0.50	0.03
Phone calls	12/17/97	3000982	on	12:17	at	14:42	for 1 mn	0.50	0.03

BALANCE DUE ▶

RECYCLED PAPER

For reservations, please call 800-833-4353.

5465

SUMMERFIELD SUITES HOTEL

	Date	Description			Amount	Tax
Phone call:	12/17/97	3822265	on 12:17 at 14:48 for	1 mn	0.50	0.00
Misc charges	12/15/97	LIQR	BACARDI RUM	1 at	6.60	0.40
Misc charges	12/15/97	FOOD	UNCLE B. RICE	1 at	2.00	0.00
Misc charges	12/15/97	FOOD	ALFREDO MIX	1 at	2.00	0.00
Misc charges	12/16/97	FOOD QUEST	GROCERY	1 at	59.81	0.00
Misc charges	12/16/97	LIQR	BACARDI RUM	1 at	5.66	0.34
Misc charges	12/16/97	TAX	CHEER DETER.	2 at	0.47	0.06

Total

THANK YOU CHOOSING SUMMERFIELD SUITES HOTEL!
FOR FUTURE RESERVATIONS DIAL 1-800-833-4353

BALANCE DUE ▶ [redacted]

-437.85

RECYCLED PAPER

For reservations, please call 800-833-4353.

SUMMERFIELD SUITES HOTEL

	Date	Description				Amount	Tax
Phone call:	12/17/97	3380852	on 12:17 at 14:42	for	1 mn	0.50	0.03
Phone call:	12/17/97	2822265	on 12:17 at 14:48	for	1 mn	0.50	0.03
Misc charge:	12/15/97	LIQR	BACARDI RUM	1 at	6.60	6.60	0.40
Misc charge:	12/15/97	FOOD	UNCLE B. RICE	1 at	2.00	2.00	0.00
Misc charge:	12/15/97	FOOD	ALFREDO MIX	1 at	2.00	2.00	0.00
Misc charge:	12/16/97	FOOD GUEST GROCERY		1 at	39.81	39.81	0.00
Misc charge:	12/16/97	LIQR	BACARDI RUM	1 at	5.66	5.66	0.34
Misc charge:	12/16/97	TAX	CHEER DETER.	2 at	0.42	0.84	0.06
Payment:	12/14/97	CASH	400.00 CASH DEPOSIT			-784.60	0.00

Total

THANK YOU CHOOSING SUMMERFIELD SUITES HOTEL!

FOR FUTURE RESERVATIONS DIAL 1-800-833-4353

BALANCE DUE ▶ [redacted]

RECYCLED PAPER

For reservations, please call 800-833-4353.

SUMMERFIELD SUITES Hotel

[redacted]

	Date	Description				Amount	Tax
n chg - Guest shared	12/14/97-12/16/97	3 Nights at 123.33				370.00	22.20
hone call:	12/14/97	2157338405	on	12:14	at 16:08 for 1 mn	2.25	0.14
hone call:	12/15/97	2158524360	on	12:14	at 22:38 for 1 mn	2.25	0.14
hone call:	12/15/97	2157338405	on	12:15	at 07:24 for 3 mn	3.25	0.20
hone call:	12/15/97	2157338405	on	12:15	at 11:24 for 2 mn	3.25	0.20
hone call:	12/15/97	2157338405	on	12:15	at 11:28 for 2 mn	3.00	0.18
hone call:	12/15/97	2343435	on	12:15	at 12:28 for 2 mn	0.50	0.03
hone call:	12/15/97	9839200	on	12:15	at 20:09 for 1 mn	0.50	0.03
hone call:	12/15/97	2346020	on	12:15	at 20:05 for 1 mn	0.50	0.03
hone call:	12/15/97	2346020	on	12:15	at 20:34 for 1 mn	0.50	0.03
hone call:	12/15/97	3860084	on	12:15	at 20:45 for 1 mn	0.50	0.03
hone call:	12/16/97	8660111	on	12:16	at 11:22 for 2 mn	0.50	0.03
hone call:	12/16/97	8660111	on	12:16	at 11:07 for 1 mn	0.50	0.03
hone call:	12/16/97	9839200	on	12:16	at 11:09 for 1 mn	0.50	0.03
hone call:	12/16/97	3860084	on	12:16	at 11:10 for 1 mn	0.50	0.03
hone call:	12/16/97	8660111	on	12:16	at 11:15 for 5 mn	0.50	0.03
hone call:	12/16/97	2343435	on	12:16	at 12:35 for 1 mn	0.50	0.03
hone call:	12/16/97	9839200	on	12:16	at 12:32 for 1 mn	0.50	0.03
hone call:	12/16/97	2343435	on	12:16	at 12:54 for 1 mn	0.50	0.03
hone call:	12/16/97	3860084	on	12:16	at 12:58 for 1 mn	0.50	0.03
hone call:	12/16/97	3860084	on	12:16	at 13:00 for 3 mn	0.50	0.03
hone call:	12/16/97	2155335200	on	12:16	at 13:14 for 1 mn	2.25	0.14
hone call:	12/16/97	2155335200	on	12:16	at 13:20 for 6 mn	3.50	0.21
hone call:	12/16/97	9839200	on	12:16	at 15:21 for 1 mn	0.50	0.03
hone call:	12/16/97	6655370	on	12:16	at 15:41 for 4 mn	0.50	0.03

BALANCE DUE ▶

RECYCLED PAPER

For reservations, please call 800-833-4353.

SUMMERFIELD SUITES Hotels

	Date	Description							Amount	Tax
hone call:	12/16/97	2153238405	on	12:16	at	17:45	for	4 mn	2.25	0.14
hone call:	12/16/97	9839200	on	12:16	at	18:31	for	3 mn	0.50	0.03
hone call:	12/16/97	7273947	on	12:16	at	18:43	for	5 mn	0.50	0.03
hone call:	12/16/97	9839200	on	12:16	at	17:51	for	1 mn	0.50	0.03
hone call:	12/16/97	2348435	on	12:16	at	18:00	for	5 mn	0.50	0.03
hone call:	12/16/97	2348435	on	12:16	at	18:20	for	5 mn	0.50	0.03
hone call:	12/16/97	2156761200	on	12:16	at	18:28	for	8 mn	4.00	0.24
hone call:	12/16/97	8669650	on	12:16	at	17:49	for	3 mn	0.50	0.03
hone call:	12/16/97	4241617	on	12:16	at	19:50	for	1 mn	0.50	0.03
hone call:	12/16/97	6827100	on	12:16	at	20:02	for	2 mn	0.50	0.03
hone call:	12/16/97	6953279	on	12:16	at	21:55	for	35 mn	0.50	0.03
hone call:	12/17/97	3966191	on	12:17	at	08:52	for	1 mn	0.50	0.03
hone call:	12/17/97	3966191	on	12:17	at	09:23	for	2 mn	0.50	0.03
hone call:	12/17/97	9833600	on	12:17	at	09:41	for	2 mn	0.50	0.03
hone call:	12/17/97	7221600	on	12:17	at	09:47	for	4 mn	0.50	0.03
hone call:	12/17/97	2369360	on	12:17	at	09:52	for	1 mn	0.50	0.03
hone call:	12/17/97	5397653	on	12:17	at	09:54	for	1 mn	0.50	0.03
hone call:	12/17/97	9832771	on	12:17	at	10:00	for	5 mn	0.50	0.03
hone call:	12/17/97	2350830	on	12:17	at	10:14	for	4 mn	0.50	0.03
hone call:	12/17/97	2154464431	on	12:17	at	10:31	for	4 mn	3.00	0.18
hone call:	12/17/97	2156327805	on	12:17	at	10:34	for	2 mn	2.50	0.15
hone call:	12/17/97	9839200	on	12:17	at	11:03	for	1 mn	0.50	0.03
hone call:	12/17/97	2155988982	on	12:17	at	11:12	for	2 mn	2.50	0.15
hone call:	12/17/97	411	on	12:17	at	14:32	for	2 mn	0.50	0.03
hone call:	12/17/97	3964011	on	12:17	at	14:36	for	5 mn	0.50	0.03

BALANCE DUE ▶

RECYCLED PAPER

For reservations, please call 800-833-4353.

5469

SUMMERFIELD SUITES® HOTEL

FOLIO

MMERFIELD SUITES HOTEL
3000 CRAWFORD PLACE
MT. LAUREL, NJ 08054

Date: 12/17/97 Page: 3

PEREZ, GLORIA Arrival: 12/14/97 Departure: 03/01/98
GUEST WILL UPDATE ACCT EVERY 5 DAYS Room Number: 0022
Suite Rate: 110.00

	Date	Description			Amount	Tax
one call:	12/17/97	3380852	on 12:17 at 14:42 for	1 mn	0.50	0.03
one call:	12/17/97	2822265	on 12:17 at 14:48 for	1 mn	0.50	0.03
sc charge:	12/15/97	LIQR	BACARDI RUM	1 at 6.60	6.60	0.40
sc charge:	12/15/97	FOOD	UNCLE B. RICE	1 at 2.00	2.00	0.00
sc charge:	12/15/97	FOOD	ALFREDO MIX	1 at 2.00	2.00	0.00
sc charge:	12/16/97	FOOD	GUEST GROCERY	1 at 59.81	59.81	0.00
sc charge:	12/16/97	LIQR	BACARDI RUM	1 at 5.66	5.66	0.34
sc charge:	12/16/97	TAX	CHEER DETER.	2 at 0.47	0.94	0.06
yment:	12/14/97	CASH	400.00 CASH DEPOSIT		-964.60	0.00

Total

THANK YOU CHOOSING SUMMERFIELD SUITES HOTEL!
FOR FUTURE RESERVATIONS DIAL 1-800-833-4353

BALANCE DUE ▶ -437.85

CYCLED PAPER

For reservations, please call 800-833-4353.

SUMMERFIELD SUITES Hotel

	Date	Description					Amount	Tax
chg - Guest share:	12/14/97-12/16/97		3 Nights	at	123.33		370.00	22.20
none call:	12/14/97	2157338405	on 12:14	at	16:08	for 1 mn	2.25	0.14
none call:	-12/15/97	2158524360	on 12:14	at	22:55	for 6 mn	3.25	0.14
none call:	-12/15/97	2157338405	on 12:15	at	02:24	for 5 mn	3.25	0.20
none call:	-12/15/97	2157338405	on 12:15	at	11:24	for 5 mn	3.25	0.20
none call:	-12/15/97	2157338405	on 12:15	at	11:26	for 4 mn	3.00	0.18
none call:	12/15/97	2343435	on 12:15	at	12:28	for 2 mn	0.50	0.03
none call:	12/15/97	7863200	on 12:15	at	20:09	for 1 mn	0.50	0.03
none call:	12/15/97	2346020	on 12:15	at	20:05	for 1 mn	0.50	0.03
none call:	12/15/97	2346020	on 12:15	at	20:06	for 1 mn	0.50	0.03
none call:	12/15/97	3840084	on 12:15	at	20:15	for 1 mn	0.50	0.03
none call:	12/16/97	8660111	on 12:16	at	11:22	for 2 mn	0.50	0.03
none call:	12/16/97	8660111	on 12:16	at	11:07	for 1 mn	0.50	0.03
none call:	12/16/97	7863200	on 12:16	at	11:09	for 1 mn	0.50	0.03
none call:	12/16/97	3860084	on 12:16	at	11:10	for 1 mn	0.50	0.03
call:	12/16/97	8660111	on 12:16	at	11:15	for 5 mn	0.50	0.03
none call:	12/16/97	2343435	on 12:16	at	12:05	for 1 mn	0.50	0.03
none call:	12/16/97	7863200	on 12:16	at	12:07	for 1 mn	0.50	0.03
none call:	12/16/97	2343435	on 12:16	at	12:54	for 1 mn	0.50	0.03
none call:	12/16/97	3860084	on 12:16	at	12:56	for 1 mn	0.50	0.03
none call:	12/16/97	3860084	on 12:16	at	13:00	for 3 mn	0.50	0.03
none call:	12/16/97	2155035200	on 12:16	at	13:14	for 1 mn	2.25	0.14
none call:	12/16/97	2155035200	on 12:16	at	13:20	for 4 mn	3.50	0.21
none call:	12/16/97	7839200	on 12:14	at	15:21	for 1 mn	0.50	0.03
one call:	12/16/97	6455370	on 12:16	at	15:41	for 4 mn	0.50	0.03

BALANCE DUE ▶

ECYCLED PAPER

For reservations, please call 800-833-4353.

5471



Date	Description					Amount	Tax
hone call:	12/16/97	2157338405	on 12:16	at 17:47	for 1 mn	2.25	0.14
hone call:	12/16/97	9839200	on 12:16	at 18:31	for 3 mn	0.50	0.03
hone call:	12/16/97	7273947	on 12:16	at 16:45	for 5 mn	0.50	0.03
hone call:	12/16/97	9839200	on 12:16	at 12:51	for 1 mn	0.50	0.03
hone call:	12/16/97	2343435	on 12:16	at 18:00	for 9 mn	0.50	0.03
hone call:	12/16/97	2343435	on 12:16	at 18:20	for 8 mn	0.50	0.03
hone call:	12/16/97	2157761200	on 12:16	at 18:28	for 6 mn	4.00	0.24
ame call:	12/16/97	8867650	on 12:16	at 17:47	for 3 mn	0.50	0.03
ane call:	12/16/97	4241612	on 12:16	at 19:56	for 1 mn	0.50	0.03
one call:	12/16/97	6477100	on 12:16	at 20:02	for 2 mn	0.50	0.03
one call:	12/16/97	6953797	on 12:16	at 21:50	for 35 mn	0.50	0.03
one call:	12/17/97	3956191	on 12:17	at 08:52	for 1 mn	0.50	0.03
one call:	12/17/97	3964191	on 12:17	at 09:23	for 2 mn	0.50	0.03
one call:	12/17/97	9833600	on 12:17	at 09:41	for 2 mn	0.50	0.03
one call:	12/17/97	7221600	on 12:17	at 09:47	for 4 mn	0.50	0.03
e call:	12/17/97	2342560	on 12:17	at 09:52	for 1 mn	0.50	0.03
ne call:	12/17/97	4289858	on 12:17	at 09:54	for 1 mn	0.50	0.03
one call:	12/17/97	9832271	on 12:17	at 10:00	for 5 mn	0.50	0.03
one call:	12/17/97	2358830	on 12:17	at 10:14	for 4 mn	0.50	0.03
one call:	12/17/97	2156464491	on 12:17	at 10:31	for 4 mn	3.00	0.18
one call:	12/17/97	2136374805	on 12:17	at 10:34	for 2 mn	2.50	0.15
one call:	12/17/97	9839200	on 12:17	at 11:03	for 1 mn	0.50	0.03
one call:	12/17/97	2155988982	on 12:17	at 11:12	for 2 mn	2.50	0.15
one call:	12/17/97	411	on 12:17	at 14:32	for 2 mn	0.50	0.03
one call:	12/17/97	3964011	on 12:17	at 14:36	for 5 mn	0.50	0.03

BALANCE DUE ▶

ECYCLED PAPER

For reservations, please call 800-833-4353.

SUMMERFIELD SUITES Hotel

SUMMERFIELD SUITES HOTEL
3000 CLAIRMONT PLACE
[illegible] - LAUREL - NJ 08054
[illegible] - [illegible] - [illegible] - (609)
[illegible] [illegible] [illegible]

	Date	Description					Amount	Tax
[illegible] call:	12/14/97	2157338405	on	12:14	at	14:00	for	1 mn	2.25	0.14
[illegible] call:	12/15/97	2156524060	on	12:14	at	22:55	for	1 mn	3.25	0.14
[illegible] call:	12/15/97	2157338405	on	12:15	at	07:24	for	5 mn	3.50	0.20
[illegible] call:	12/15/97	2157338405	on	12:15	at	11:24	for	5 mn	3.50	0.20
[illegible] call:	12/15/97	2157338405	on	12:17	at	11:29	for	2 mn	2.00	0.10
[illegible] call:	12/15/97	2339453	on	12:15	at	12:28	for	2 mn	0.50	0.03
[illegible] call:	12/15/97	9839200	on	12:15	at	20:02	for	2 mn	0.50	0.03
[illegible] call:	12/15/97	2346020	on	12:15	at	20:35	for	2 mn	0.50	0.03
[illegible] call:	12/15/97	2346020	on	12:15	at	20:54	for	2 mn	0.50	0.03
[illegible] call:	12/15/97	3860066	on	12:15	at	20:45	for	2 mn	0.50	0.03
[illegible] call:	12/16/97	8660111	on	12:16	at	11:22	for	2 mn	0.50	0.03
[illegible] call:	12/16/97	8660111	on	12:16	at	11:07	for	2 mn	0.50	0.03
[illegible] call:	12/16/97	9839200	on	12:16	at	11:09	for	2 mn	0.50	0.03
[illegible] call:	12/16/97	3860066	on	12:16	at	11:10	for	2 mn	0.50	0.03
[illegible] call:	12/16/97	8660111	on	12:16	at	11:15	for	2 mn	0.50	0.03
[illegible] call:	12/16/97	2343435	on	12:16	at	12:35	for	1 mn	0.50	0.03
[illegible] call:	12/16/97	9839200	on	12:16	at	12:32	for	1 mn	0.50	0.03
[illegible] call:	12/16/97	2343435	on	12:16	at	12:34	for	1 mn	0.50	0.03
[illegible] call:	12/16/97	3860066	on	12:16	at	12:34	for	1 mn	0.50	0.03
[illegible] call:	12/16/97	3860066	on	12:16	at	13:00	for	3 mn	0.50	0.03
[illegible] call:	12/16/97	2155335200	on	12:16	at	13:14	for	1 mn	2.25	0.14
[illegible] call:	12/16/97	2155335200	on	12:16	at	13:20	for	4 mn	3.50	0.21
[illegible] call:	12/16/97	9839200	on	12:16	at	15:21	for	1 mn	0.50	0.03
[illegible] call:	12/16/97	6655370	on	12:16	at	15:41	for	2 mn	0.50	0.03
[illegible] call:	12/16/97	2157338405	on	12:16	at	17:45	for	1 mn	2.25	0.14

BALANCE DUE

RECYCLED PAPER

For reservations, please call 800-833-4353.

5473

SUMMERFIELD SUITES HOTEL

SUMMERFIELD SUITES HOTEL
8000 CRAWFORD PLACE

Mt. Laurel, NJ 08054

Date: 12/17/97

Folio:

FREE: BLACK

GUEST WILL UPDATE ACCT

EXPT: 3 Days

Room Number: 0

Rate: 119.00

	Date	Description					Amount	Tax
Phone call:	12/16/97	9839200	on	12:16	at	18:31	for 1 mn	0.50	0.03
Phone call:	12/16/97	7273947	on	12:16	at	18:45	for 5 mn	0.50	0.03
Phone call:	12/16/97	9839200	on	12:16	at	17:51	for 1 mn	0.50	0.03
Phone call:	12/16/97	2344435	on	12:16	at	18:00	for 8 mn	0.50	0.03
Phone call:	12/16/97	2344435	on	12:16	at	18:20	for 6 mn	0.50	0.03
Phone call:	12/16/97	2156761200	on	12:16	at	18:28	for 8 mn	4.00	0.24
Phone call:	12/16/97	8689650	on	12:16	at	17:49	for 3 mn	0.50	0.03
Phone call:	12/16/97	4241617	on	12:16	at	19:58	for 1 mn	0.50	0.03
Phone call:	12/16/97	6277100	on	12:16	at	20:02	for 2 mn	0.50	0.03
Phone call:	12/16/97	6943299	on	12:16	at	21:55	for 30 mn	0.50	0.03
Phone call:	12/17/97	3766191	on	12:17	at	08:52	for 1 mn	0.50	0.03
Phone call:	12/17/97	3766191	on	12:17	at	09:03	for 2 mn	0.50	0.03
Phone call:	12/17/97	9833600	on	12:17	at	09:11	for 2 mn	0.50	0.03
Phone call:	12/17/97	7221600	on	12:17	at	09:12	for 4 mn	0.50	0.03
Phone call:	12/17/97	2349560	on	12:17	at	09:52	for 1 mn	0.50	0.03
Phone call:	12/17/97	4289858	on	12:17	at	09:54	for 1 mn	0.50	0.03
Phone call:	12/17/97	9832721	on	12:17	at	10:00	for 5 mn	0.50	0.03
Phone call:	12/17/97	9358830	on	12:17	at	10:14	for 4 mn	0.50	0.03
Phone call:	12/17/97	2156464431	on	12:17	at	10:31	for 7 mn	3.00	0.18
Phone call:	12/17/97	2156574805	on	12:17	at	10:36	for 2 mn	2.50	0.15
Phone call:	12/17/97	9859200	on	12:17	at	11:03	for 1 mn	0.50	0.03
Phone call:	12/17/97	2155988982	on	12:17	at	11:12	for 2 mn	2.50	0.15
Phone call:	12/17/97	411	on	12:17	at	14:32	for 2 mn	0.50	0.03
Phone call:	12/17/97	3764011	on	12:17	at	14:38	for 5 mn	0.50	0.03
Phone call:	12/17/97	3380852	on	12:17	at	14:42	for 1 mn	0.50	0.03

BALANCE DUE ▶

RECYCLED PAPER

For reservations, please call 800-833-4353.

SUMMERFIELD SUITES Hotels

SUMMERFIELD SUITES HOTEL
3000 CRANFORD PLACE

GUEST NAME
REFER TO FOLIO
GUEST NAME ACCT

	Date	Description					Amount	Tax
Phone Call:	12/17/97	2822265	on	12:17	at 1:46	for 1 min	0.50	0.03
Misc charges	12/15/97	LIQR		BACARDI RUM	1 at	6.40	6.40	0.40
Misc charges	12/15/97	FOOD		UNCLE B. RICE	1 at	2.00	2.00	0.00
Misc charges	12/15/97	FOOD		ALFREDO MIX	1 at	2.00	2.00	0.00
Misc charges	12/16/97	FOOD	GUEST GROCERY		1 at	53.01	53.01	0.00
Misc charges	12/16/97	LIQR		BACARDI RUM	1 at	5.66	5.66	0.34
Misc charges	12/16/97	TAX		CHEER BEER	2 at	0.47	0.94	0.06

Total

THANK YOU CHOOSING SUMMERFIELD SUITES HOTEL!
FOR FUTURE RESERVATIONS DIAL 1-800-833-4353

BALANCE DUE

-437.05

CYCLED PAPER

For reservations, please call 800-833-4353.

5475

SUMMERFIELD SUITES HOTEL

SUMMERFIELD SUITES HOTEL
5000 CRAWFORD BLVD

MI LANSING MI 48917

GUEST NAME ANDREW ACKER FOLIO # 5475

	Date	Description		Amount	Tax
m Chg - Guest Share	12/14/97-12/16/97	3 Nights @ 124.00		372.00	22.20
ayments	12/14/97 CASH	400.00 CASH DEPOSIT		-744.20	0.00

Total

THANK YOU CHOOSING SUMMERFIELD SUITES HOTEL!
FOR FUTURE RESERVATIONS DIAL 1-800-833-4353

BALANCE DUE ▶ -437.85

For reservations, please call 800-833-4353.

RECYCLED PAPER

5476

SUMMERFIELD SUITES HOTEL

Date	Description	Amount	Tax
[illegible]	Guest charges 12/14/97 - 12/17/97 - 3 Nights @ 123.33	370.00	22.20
[illegible]	12/14/97 CASH 400.00 CASH DEPOSIT	-96.60	0.00

Total

THANK YOU CHOOSING SUMMERFIELD SUITES HOTEL!
FOR FUTURE RESERVATIONS DIAL 1-800-833-4353

BALANCE DUE ▶

YCLED PAPER

For reservations, please call 800-833-4353.

5477

SUMMERFIELD SUITES® HOTEL

FOLIO

SUMMERFIELD SUITES HOTEL
000 CRAWFORD PLACE

MT. LAUREL, NJ 08054

[redacted]

GUEST WILL UPDATE ACCT. EVERY 6 DAYS

Room Number: 00
Suite Rate: $10.0

	Date	Description					Amount	
Posting - Guest Charge:	12/11/97-12/18/97		7 Nights at 118.00				590.00	35.40
Payment:	12/14/97	CASH	400.00 CASH DEPOSIT				-964.60	0.00
Phone Calls:	12/14/97	2157338405	on 12:14	at 10:08	for	1 mn	0.25	0.14
Phone Calls:	12/15/97	2155564360	on 12:14	at 23:55	for	1 mn	0.25	0.14
Phone Calls:	12/15/97	2157338405	on 12:15	at 02:14	for	5 mn	3.25	0.20
Phone Calls:	12/15/97	2157338405	on 12:15	at 11:24	for	5 mn	3.35	0.20
Phone Calls:	12/15/97	2157338405	on 12:15	at 11:28	for	4 mn	3.00	0.19
Phone Calls:	12/15/97	2364435	on 12:15	at 12:26	for	2 mn	0.50	0.03
Phone Calls:	12/15/97	9837200	on 12:15	at 20:09	for	1 mn	0.50	0.03
Phone Calls:	12/15/97	2340020	on 12:15	at 20:35	for	1 mn	0.50	0.03
Phone Calls:	12/15/97	2340020	on 12:15	at 20:38	for	1 mn	0.50	0.03
Phone Calls:	12/15/97	3860084	on 12:15	at 20:45	for	1 mn	0.50	0.03
Phone Calls:	12/16/97	8660111	on 12:16	at 11:02	for	7 mn	0.50	0.03
Phone Calls:	12/16/97	3660111	on 12:16	at 11:07	for	1 mn	0.50	0.03
Phone Calls:	12/16/97	9837200	on 12:16	at 11:09	for	1 mn	0.50	0.03
Phone Calls:	12/16/97	3860084	on 12:16	at 11:10	for	1 mn	0.50	0.03
Phone Calls:	12/16/97	8660111	on 12:16	at 11:15	for	5 mn	0.50	0.03
Phone Calls:	12/16/97	2364435	on 12:16	at 12:35	for	1 mn	0.50	0.03
Phone Calls:	12/16/97	9837200	on 12:16	at 12:37	for	1 mn	0.50	0.03
Phone Calls:	12/16/97	2364435	on 12:16	at 12:54	for	1 mn	0.50	0.03
Phone Calls:	12/16/97	3860084	on 12:16	at 12:56	for	1 mn	0.50	0.03
Phone Calls:	12/16/97	3860084	on 13:16	at 10:00	for	3 mn	0.50	0.03
Phone Calls:	12/16/97	2155935200	on 12:16	at 13:14	for	1 mn	2.25	0.14
Phone Calls:	12/16/97	2155935200	on 12:16	at 13:20	for	5 mn	3.50	0.21
Phone Calls:	12/16/97	9837200	on 12:16	at 15:21	for	1 mn	0.50	0.03

BALANCE DUE ▶

RECYCLED PAPER

For reservations, please call 800-833-4353.

SUMMERFIELD SUITES from

	Date	Description						Amount	Ta
Phone calls	12/16/97	6673670	on	12:16	at	15:41	for	4 mn	0.50	0.03
Phone calls	12/16/97	2157831407	on	12:16	at	17:51	for	1 mn	2.25	0.14
Phone calls	12/16/97	9839200	on	12:16	at	18:01	for	3 mn	0.50	0.03
Phone calls	12/16/97	7273947	on	12:16	at	18:45	for	5 mn	0.50	0.03
Phone calls	12/16/97	9839200	on	12:16	at	17:51	for	1 mn	0.50	0.03
Phone calls	12/16/97	2343435	on	12:16	at	18:00	for	2 mn	0.50	0.03
Phone calls	12/16/97	2343435	on	12:16	at	18:20	for	8 mn	0.50	0.03
Phone calls	12/16/97	2156761200	on	12:16	at	18:28	for	8 mn	4.00	0.24
Phone calls	12/16/97	8669650	on	12:16	at	17:42	for	5 mn	0.50	0.03
Phone calls	12/16/97	4241617	on	12:16	at	19:58	for	1 mn	0.50	0.03
Phone calls	12/16/97	6672100	on	12:16	at	20:02	for	2 mn	0.50	0.03
Phone calls	12/16/97	6758997	on	12:16	at	21:53	for	39 mn	0.50	0.03
Phone calls	12/17/97	3966191	on	12:17	at	08:52	for	1 mn	0.50	0.03
Phone calls	12/17/97	3966191	on	12:17	at	09:23	for	2 mn	0.50	0.03
Phone calls	12/17/97	9833600	on	12:17	at	09:41	for	2 mn	0.50	0.03
Phone calls	12/17/97	7221600	on	12:17	at	09:47	for	4 mn	0.50	0.03
Phone calls	12/17/97	2349560	on	12:17	at	09:52	for	1 mn	0.50	0.03
Phone calls	12/17/97	4282858	on	12:17	at	09:59	for	1 mn	0.50	0.03
Phone calls	12/17/97	9932721	on	12:17	at	10:00	for	3 mn	0.50	0.03
Phone calls	12/17/97	2358890	on	12:17	at	10:14	for	4 mn	0.50	0.03
Phone calls	12/17/97	2154644431	on	12:17	at	10:31	for	4 mn	3.00	0.18
Phone calls	12/17/97	2156374803	on	12:17	at	10:34	for	2 mn	2.50	0.15
Phone calls	12/17/97	9839200	on	12:17	at	11:03	for	1 mn	0.50	0.03
Phone calls	12/17/97	2155988982	on	12:17	at	11:12	for	2 mn	2.50	0.15
Phone calls	12/17/97	411	on	12:17	at	14:32	for	2 mn	0.50	0.03

BALANCE DUE ▶

RECYCLED PAPER

5479

SUMMERFIELD SUITES Hotel

	Date	Description				Amount	Ta
Phone call:	12/17/97	3264011	on 12:17 at 14:06	for	5 mn	0.50	0.03
Phone call:	12/17/97	3280852	on 13:17 at 14:42	for	1 mn	0.50	0.03
Phone call:	12/17/97	2822265	on 12:17 at 14:48	for	1 mn	0.50	0.03
Phone call:	12/18/97	3946191	on 12:18 at 16:55	for	2 mn	0.50	0.00
Phone call:	12/19/97	8035229757	on 12:19 at 07:33	for	3 mn	2.25	0.16
Misc charges	12/15/97	LIQR	BACARDI RUM	1 at	6.60	6.60	0.40
Misc charges	12/15/97	FOOD	UNCLE B. RICE	1 at	2.00	2.00	0.00
Misc charges	12/15/97	FOOD	ALFREDO MIX	1 at	2.00	2.00	0.00
Misc charges	12/16/97	FOOD GUEST	GROCERY	1 at	59.81	59.81	0.00
Misc charges	12/16/97	LIQR	BACARDI RUM	1 at	5.66	5.66	0.34
Misc charges	12/16/97	TAX	CHEER DETER.	2 at	0.47	0.94	0.08
Misc charges	12/18/97	NON	PASTA	1 at	1.50	1.50	0.00
Misc charges	12/18/97	NON	PASTA SAUCE	1 at	3.50	3.50	0.00
Misc charges	12/18/97	LIQR	SAMBUCA	1 at	6.84	6.84	0.41

Total -188.76

THANK YOU! CHOOSING SUMMERFIELD SUITES HOTEL!
FOR FUTURE RESERVATIONS DIAL 1-800-833-4353

BALANCE DUE ▶

RECYCLED PAPER

For reservations, please call 800-833-4353.



SUMMERFIELD SUITES HOTEL

FOLIO

SUMMERFIELD SUITES HOTEL
2000 CRAWFORD PLACE
MT. LAUREL, NJ 08054

[redacted]

GUEST WILL UPDATE ACCT EVERY 0 DAYS

[redacted]

Suite #: 110

	Date	Description						Amount	T:
Rm chg - Guest share:	12/14/97-12/18/97	5 Nights at 110.00						550.00	0.33
Payment:	12/14/97	CASH 400.00 CASH DEPOSIT						-964.60	0.00
Phone call:	12/14/97	2157338405	on	12:14	at	16:08	for 1 mn	2.25	0.14
Phone call:	12/15/97	2158524360	on	12:14	at	22:55	for 1 mn	2.25	0.14
Phone call:	12/15/97	2157338405	on	12:15	at	07:24	for 5 mn	3.25	0.20
Phone call:	12/15/97	2157338405	on	12:15	at	11:24	for 5 mn	3.25	0.20
Phone call:	12/15/97	2157338405	on	12:15	at	11:28	for 4 mn	3.00	0.18
Phone call:	12/15/97	2343435	on	12:15	at	12:28	for 2 mn	0.50	0.03
Phone call:	12/15/97	9839200	on	12:15	at	20:09	for 1 mn	0.50	0.03
Phone call:	12/15/97	2346020	on	12:15	at	20:35	for 1 mn	0.50	0.03
Phone call:	12/15/97	2346020	on	12:15	at	20:36	for 1 mn	0.50	0.03
Phone call:	12/15/97	3860084	on	12:15	at	20:45	for 1 mn	0.50	0.03
Phone call:	12/16/97	8660111	on	12:16	at	11:22	for 7 mn	0.50	0.03
Phone call:	12/16/97	8660111	on	12:16	at	11:07	for 1 mn	0.50	0.03
Phone call:	12/16/97	9839200	on	12:16	at	11:09	for 1 mn	0.50	0.03
Phone call:	12/16/97	3860084	on	12:16	at	11:10	for 1 mn	0.50	0.03
Phone call:	12/16/97	8660111	on	12:16	at	11:15	for 5 mn	0.50	0.03
Phone call:	12/16/97	2343435	on	12:16	at	12:35	for 1 mn	0.50	0.03
Phone call:	12/16/97	9839200	on	12:16	at	12:37	for 1 mn	0.50	0.03
Phone call:	12/16/97	2343435	on	12:16	at	12:54	for 1 mn	0.50	0.03
Phone call:	12/16/97	3860084	on	12:16	at	12:56	for 1 mn	0.50	0.03
Phone call:	12/16/97	3860084	on	12:16	at	13:00	for 3 mn	0.50	0.03
Phone call:	12/16/97	2155335200	on	12:16	at	13:14	for 1 mn	2.25	0.14
Phone call:	12/16/97	2155335200	on	12:16	at	13:20	for 6 mn	3.50	0.21
Phone call:	12/16/97	9839200	on	12:16	at	15:21	for 1 mn	0.50	0.03

BALANCE DUE ▶ [redacted]

RECYCLED PAPER

For reservations, please call 800-833-4353.

5481

SUMMERFIELD SUITES Hotel

	Date	Description						Amount	T
Rm Chg - Guest shared	12/14/97-12/18/97		5 Nights	at	110.00			550.00	0.33
Payments	12/14/97	CASH	400.00	CASH DEPOSIT				-944.50	0.00
Phone calls	12/14/97	2157338405	on	12:14	at	14:08	for	1 mn	2.25	0.14
Phone calls	12/15/97	2158524360	on	12:14	at	22:55	for	1 mn	2.25	0.14
Phone calls	12/15/97	2157338405	on	12:15	at	02:26	for	5 mn	3.25	0.20
Phone calls	12/15/97	2157338405	on	12:15	at	11:24	for	5 mn	3.25	0.20
Phone calls	12/15/97	2157338405	on	12:15	at	11:28	for	4 mn	3.00	0.18
Phone calls	12/15/97	2343435	on	12:15	at	12:29	for	2 mn	0.50	0.03
Phone calls	12/15/97	9897200	on	12:15	at	20:02	for	1 mn	0.50	0.03
Phone calls	12/15/97	2346020	on	12:15	at	20:35	for	1 mn	0.50	0.03
Phone calls	12/15/97	2346020	on	12:15	at	20:36	for	1 mn	0.50	0.03
Phone calls	12/15/97	3860084	on	12:15	at	20:45	for	1 mn	0.50	0.03
Phone calls	12/16/97	8660111	on	12:16	at	11:22	for	2 mn	0.50	0.03
Phone calls	12/16/97	8660111	on	12:16	at	11:03	for	1 mn	0.50	0.03
Phone calls	12/16/97	9897200	on	12:16	at	11:09	for	1 mn	0.50	0.03
Phone calls	12/16/97	3860084	on	12:16	at	11:10	for	1 mn	0.50	0.03
Phone calls	12/16/97	8660111	on	12:16	at	11:15	for	5 mn	0.50	0.03
Phone calls	12/16/97	2343435	on	12:16	at	12:35	for	1 mn	0.50	0.03
Phone calls	12/16/97	9897200	on	12:16	at	12:32	for	1 mn	0.50	0.03
Phone calls	12/16/97	2343435	on	12:16	at	12:54	for	1 mn	0.50	0.03
Phone calls	12/16/97	3860084	on	12:16	at	12:56	for	1 mn	0.50	0.03
Phone calls	12/16/97	3860084	on	12:16	at	13:00	for	3 mn	0.50	0.03
Phone calls	12/16/97	2155335200	on	12:16	at	13:14	for	1 mn	2.25	0.14
Phone calls	12/16/97	2155335200	on	12:16	at	13:20	for	5 mn	3.50	0.21
Phone calls	12/16/97	9835200	on	12:14	at	15:21	for	1 mn	0.50	0.03

BALANCE DUE ▶

RECYCLED PAPER

For reservations, please call 800-833-4353.

SUMMERFIELD SUITES Hotel

Date	Description				Amount	T
Phone call	12/16/97	6[illegible]320	on 12:16	at [illegible]	for 4 mn	0.50	0.03
Phone call	12/16/97	215738405	on 12:16	at 12:45	for 1 mn	2.25	0.14
Phone call	12/16/97	9639200	on 12:16	at 18:31	for 3 mn	0.50	0.03
Phone call	12/16/97	7727947	on 12:13	at 18:41	for 3 mn	0.50	0.03
Phone call	12/16/97	9639200	on 12:16	at 17:51	for 1 mn	0.50	0.03
Phone call	12/16/97	2243255	on 12:13	at 18:00	for 2 mn	0.50	0.03
Phone call	12/16/97	3463[illegible]	on 12:16	at 18:20	for 8 mn	0.50	0.03
Phone call	12/16/97	2156761300	on 12:16	at 16:[illegible]	for [illegible] mn	4.00	0.25
Phone call	12/16/97	5869600	on 12:16	at 17:[illegible]	for 3 mn	0.50	0.03
Phone call	12/16/97	4241647	on 12:16	at 19:5[illegible]	for 1 mn	0.50	0.03
Phone call	12/16/97	2672100	on 12:16	at 20:0[illegible]	for [illegible] mn	0.50	0.03
Phone call	12/16/97	4753[illegible]	on 12:16	at 21:5[illegible]	for 5 mn	0.50	0.03
Phone call	12/17/97	9[illegible]191	on 12:17	at 09:27	for 1 mn	0.50	0.03
Phone call	12/17/97	3706171	on 12:17	at 09:25	for 2 mn	0.50	0.03
Phone call	12/17/97	9833000	on 12:17	at 09:41	for 2 mn	0.50	0.03
Phone call	12/17/97	7221800	on 12:17	at 09:47	for 4 mn	0.50	0.03
Phone call	12/17/97	2249[illegible]50	on 12:17	at 09:52	for 1 mn	0.50	0.03
Phone call	12/17/97	4289953	on 12:17	at 09:54	for 1 mn	0.50	0.03
Phone call	12/17/97	983[illegible]71	on 12:17	at 10:00	for 8 mn	0.50	0.03
Phone call	12/17/97	8350030	on 12:17	at 10:16	for 4 mn	0.50	0.03
Phone call	12/17/97	2152464431	on 12:17	at 10:31	for 2 mn	3.00	0.19
Phone call	12/17/97	2156826805	on 12:17	at 10:37	for 2 mn	2.50	0.15
Phone call	12/17/97	9837200	on 12:17	at 11:03	for 1 mn	0.50	0.03
Phone call	12/17/97	2155288752	on 12:17	at 11:12	for 2 mn	2.50	0.15
Phone call	12/17/97	411	on 12:17	at 14:32	for 2 mn	0.00	0.03

BALANCE DUE ▶

SUMMERFIELD SUITES Hotel

	Date	Description						Amount	Ta
Phone calls	12/16/97	4655270	on	12:16	at	10:41	for	4 mn	0.50	0.03
Phone calls	12/16/97	2157336405	on	12:16	at	17:45	for	1 mn	2.25	0.14
Phone calls	12/16/97	9839200	on	12:16	at	18:31	for	3 mn	0.50	0.03
Phone calls	12/16/97	7223942	on	12:16	at	19:45	for	5 mn	0.50	0.03
Phone calls	12/16/97	9839200	on	12:16	at	17:51	for	1 mn	0.50	0.03
Phone calls	12/16/97	2343435	on	12:16	at	18:09	for	7 mn	0.50	0.03
Phone calls	12/16/97	2343436	on	12:16	at	18:20	for	8 mn	0.50	0.03
Phone calls	12/16/97	2156731200	on	12:16	at	18:29	for	5 mn	4.00	0.24
Phone calls	12/16/97	9869650	on	12:16	at	17:42	for	3 mn	0.50	0.03
Phone calls	12/16/97	4241617	on	12:16	at	19:[illegible]	for	[illegible] mn	0.50	0.03
Phone calls	12/16/97	6427100	on	12:16	at	20:0[illegible]	for	[illegible] mn	0.50	0.03
Phone calls	12/16/97	6958727	on	12:16	at	21:55	for	35 mn	0.50	0.03
Phone calls	12/17/97	3766171	on	12:17	at	08:53	for	1 mn	0.50	0.03
Phone calls	12/17/97	3964121	on	12:17	at	09:23	for	2 mn	0.50	0.03
Phone calls	12/17/97	9833600	on	12:17	at	09:41	for	2 mn	0.50	0.03
Phone calls	12/17/97	7281600	on	12:17	at	09:47	for	4 mn	0.50	0.03
Phone calls	12/17/97	2349560	on	12:17	at	09:52	for	1 mn	0.50	0.03
Phone calls	12/17/97	4287859	on	12:17	at	09:54	for	1 mn	0.50	0.03
Phone calls	12/17/97	9832771	on	12:17	at	10:00	for	3 mn	0.50	0.03
Phone calls	12/17/97	2328830	on	12:17	at	10:14	for	4 mn	0.50	0.03
Phone calls	12/17/97	2156464431	on	12:17	at	10:31	for	4 mn	3.00	0.18
Phone calls	12/17/97	2156374905	on	12:17	at	10:34	for	2 mn	2.50	0.15
Phone calls	12/17/97	9839200	on	12:17	at	11:03	for	1 mn	0.50	0.03
Phone calls	12/17/97	2155988982	on	12:17	at	11:12	for	2 mn	2.50	0.15
Phone calls	12/17/97	411	on	12:17	at	14:32	for	2 mn	0.50	0.03

BALANCE DUE ▶

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SUMMERFIELD SUITES Hotel

Date	Description				Amount	Tax
Phone call	12/12/97 [illegible]	on 12:12	[illegible]	for 5 min	0.70	0.03
Phone call	12/12/97 [illegible]	on 12:14	[illegible]	for 1 min	0.30	0.03
Phone call	12/12/97 [illegible]	on 12:17	[illegible]	for 1 min	0.50	0.03
Phone call	12/18/97 [illegible]	on 12:10	[illegible]	for 2 min	0.50	0.03
Phone call	12/19/97 [illegible]	on 12:12	[illegible]	for 3 min	1.77	0.16
Misc charges	12/15/97 [illegible]	[illegible]	[illegible]	1 ea	2.60	0.40
Misc charges	12/15/97 FOOD	LUNCH W/ RICE	1 ea	2.00	2.00	0.00
Misc charges	12/15/97 FOOD	ALFREDO MIX	1 ea	2.00	2.00	0.00
Misc charges	12/15/97 FOOD	CHEESE	1 ea	3.61	3.61	0.00
Misc charges	12/15/97 FOOD	BACARDI RUM	1 ea	5.09	5.09	0.00
Misc charges	12/15/97 TAX	[illegible]	1 ea	0.42	0.24	0.02
Misc charges	12/15/97 NON	[illegible]	1 ea	1.50	1.50	0.00
Misc charges	12/15/97 NON	PASTA SAUCE	1 ea	3.50	3.50	0.00
Misc charges	12/15/97 FOOD	[illegible]	1 ea	4.84	4.84	0.41

Total 264.09

THANK YOU CHOOSING SUMMERFIELD SUITES HOTEL!
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BALANCE DUE ▶

RECYCLED PAPER

5485

SUMMERFIELD SUITES Hotels

	Date	Description					Amount	Ta
Phone calls	12/17/97	3964011	on 12:17	at 14:36	for	5 mn	0.50	0.03
Phone calls	12/17/97	3990852	on 12:17	at 14:42	for	1 mn	0.50	0.03
Phone calls	12/17/97	2822264	on 12:17	at 14:48	for	1 mn	0.50	0.03
Phone calls	12/18/97	3946191	on 12:18	at 16:55	for	2 mn	0.56	0.03
Phone calls	12/17/97	8035227257	on 12:17	at 07:33	for	3 mn	2.73	0.14
Misc charges	12/15/97	LIQR	BACARDI RUM	1	at	4.40	4.40	0.44
Misc charges	12/15/97	FOOD	UNCLE B. RICE	1	at	2.00	2.00	0.00
Misc charges	12/15/97	FOOD	ALFREDO MIX	1	at	2.00	2.00	0.00
Misc charges	12/12/97	FOOD GUEST	GROCERY	1	at	59.81	59.81	0.00
Misc charges	12/12/97	LIQR	BACARDI RUM	1	at	5.44	5.44	0.27
Misc charges	12/12/97	FOOD	CHEER DETER.	2	at	0.47	0.94	0.00
Misc charges	12/18/97	NON	PASTA	1	at	1.50	1.50	0.00
Misc charges	12/18/97	NON	PASTA SAUCE	1	at	3.50	3.50	0.00
Misc charges	12/18/97	LIQR	SAMBUCA	1	at	4.84	4.84	0.41

Total

THANK YOU CHOOSING SUMMERFIELD SUITES HOTELS
FOR FUTURE RESERVATIONS DIAL 1-800-833-4353

BALANCE DUE

RECYCLED PAPER

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SUMMERFIELD SUITES HOTEL

	Date	Description						Amount	Tax
Phone call	12/17/97	3960611	on	12:12	at	14:36	for	5 mn	0.50	0.03
Phone call	12/17/97	3380652	on	12:12	at	14:42	for	1 mn	0.50	0.03
Phone call	12/17/97	3862265	on	12:13	at	14:48	for	1 mn	0.50	0.03
Phone call	12/18/97	3966191	on	13:18	at	14:50	for	3 mn	0.50	0.03
Phone call	12/19/97	6035227757	on	12:17	at	07:33	for	3 mn	2.25	0.14
Phone call	12/20/97	4765300	on	12:20	at	15:10	for	1 mn	0.50	0.03
Phone call	12/20/97	384990	on	12:20	at	16:46	for	1 mn	0.50	0.03
Phone call	12/20/97	221101	on	12:20	at	15:15	for	1 mn	0.50	0.03
Rsc charges	12/15/97	LIQR			BACARDI RUM		1	at	6.60	6.60	0.40
Rsc charges	12/15/97	FOOD			UNCLE B. RICE		1	at	2.00	2.00	0.00
Rsc charges	12/15/97	FOOD			ALFREDO MIX		1	at	2.00	2.00	0.00
Rsc charges	12/16/97	FOOD GUEST	GROCERY				1	at	52.81	52.81	0.00
Rsc charges	12/16/97	LIQR			BACARDI RUM		1	at	5.66	5.66	0.34
Rsc charges	12/16/97	TAX			CHEEZ DEXTER		2	at	0.47	0.94	0.06
Rsc charges	12/18/97	NON			PASTA		1	at	1.50	1.50	0.00
Rsc charges	12/18/97	NON			PASTA SAUCE		1	at	3.50	3.50	0.00
Rsc charges	12/18/97	LIQR			SAMBUCA		1	at	4.84	4.84	0.41
Rsc charges	12/20/97	TAX			HAIR SPRAY		1	at	1.83	1.83	0.11
Rsc charges	12/20/97	NON			CANDY		1	at	0.75	0.75	0.00

Total -143.09

THANK YOU CHOOSING SUMMERFIELD SUITES HOTEL!
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BALANCE DUE ▶

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For reservations, please call 800-833-4353.

5487

SUMMERFIELD SUITES Hotel

Date	Description					Amount	Ta
Rm chg	Guest Share	12/14/97-12/16/97	2 Nights			440.00	0.00
Payment	12/14/97 CASH	400.00	CASH DEPOSIT			400.00	0.00
Phone calls	12/14/97 2153335405	on 12:14	at 14:09	for	1 mn	2.25	0.14
Phone calls	12/15/97 2153335405	on 12:14	at 22:55	for	1 mn	2.25	0.14
Phone calls	12/15/97 2153335405	on 12:15	at 07:1	for	3 mn	3.25	0.20
Phone calls	12/15/97 2153335405	on 12:15	at 11:24	for	2 mn	3.25	0.20
Phone calls	12/15/97 2153335405	on 12:15	at 11:29	for	6 mn	6.00	0.18
Phone calls	12/15/97 2143435	on 12:15	at 12:28	for	2 mn	0.50	0.03
Phone calls	12/15/97 9839200	on 12:15	at 20:07	for	1 mn	0.50	0.03
Phone calls	12/15/97 2143435	on 12:15	at 20:30	for	1 mn	0.50	0.03
Phone calls	12/15/97 2143435	on 12:15	at 20:36	for	1 mn	0.50	0.03
Phone calls	12/15/97 3860084	on 12:15	at 20:47	for	1 mn	0.50	0.03
Phone calls	12/16/97 8660111	on 12:16	at 11:22	for	2 mn	0.50	0.03
Phone calls	12/16/97 8660111	on 12:16	at 11:27	for	1 mn	0.50	0.03
Phone calls	12/16/97 9839200	on 12:16	at 11:09	for	1 mn	0.50	0.03
Phone calls	12/16/97 3860084	on 12:16	at 11:10	for	1 mn	0.50	0.03
Phone calls	12/16/97 8660111	on 12:16	at 11:13	for	3 mn	0.50	0.03
Phone calls	12/16/97 2143435	on 12:16	at 12:35	for	1 mn	0.50	0.03
Phone calls	12/16/97 9839200	on 12:16	at 12:32	for	1 mn	0.50	0.03
Phone calls	12/16/97 2143435	on 12:16	at 12:54	for	1 mn	0.50	0.03
Phone calls	12/16/97 3860084	on 12:16	at 12:56	for	1 mn	0.50	0.03
Phone calls	12/16/97 3860084	on 12:16	at 13:00	for	3 mn	0.50	0.03
Phone calls	12/16/97 2155335200	on 12:16	at 13:14	for	1 mn	2.25	0.14
Phone calls	12/16/97 2155335200	on 12:16	at 13:20	for	8 mn	3.50	0.21
Phone calls	12/16/97 9839200	on 12:16	at 15:21	for	1 mn	0.50	0.03

BALANCE DUE ▶

RECYCLED PAPER

For reservations, please call 800-833-4353.

SUMMERFIELD SUITES HOTEL

FOLIO

SUMMERFIELD SUITES HOTEL
[redacted] CRAWFORD PLACE
MT. LAUREL, NJ 08054
PEREZ, GLORIA
GUEST WILL UPDATE ACCT EVERY 5 DAYS

Date: 12/20/97 Page: 1
Arrival: 12/14/97 Departure: 03/01/98
Room Number: 0082
Suite Rate: 110.00

	Date	Description							Amount	Tax
Ac chg - Guest share:		12/14/97-12/19/97			5 Nights at 110.00				550.00	55.00
Payment:	12/14/97	CASH	400.00	CASH DEPOSIT					-954.50	0.00
Phone calls	12/14/97	2157338405	on	13:14	at	10:08	for	1 mn	2.25	0.14
Phone calls	12/15/97	2158524360	on	12:14	at	22:55	for	1 mn	2.25	0.14
Phone calls	12/15/97	2157338405	on	12:15	at	07:24	for	5 mn	3.75	0.30
Phone calls	12/15/97	2157338405	on	13:15	at	11:24	for	5 mn	3.75	0.30
Phone calls	12/15/97	2157338405	on	13:15	at	11:29	for	4 mn	3.00	0.18
Phone calls	12/15/97	2343435	on	12:15	at	12:28	for	8 mn	0.50	0.03
Phone calls	12/15/97	9839200	on	12:15	at	20:09	for	1 mn	0.50	0.03
Phone calls	12/15/97	2346020	on	12:15	at	20:35	for	1 mn	0.50	0.03
Phone calls	12/15/97	2346020	on	12:15	at	20:36	for	1 mn	0.50	0.03
Phone calls	12/15/97	3860084	on	12:15	at	20:45	for	1 mn	0.50	0.03
Phone calls	12/16/97	8660111	on	12:16	at	11:22	for	7 mn	0.50	0.03
Phone calls	12/16/97	8660111	on	12:16	at	11:07	for	1 mn	0.50	0.03
Phone calls	12/16/97	9839200	on	12:15	at	11:09	for	1 mn	0.50	0.03
Phone calls	12/16/97	3860084	on	12:16	at	11:10	for	1 mn	0.50	0.03
Phone calls	12/16/97	8660111	on	12:16	at	11:15	for	5 mn	0.50	0.03
Phone calls	12/16/97	2343435	on	12:16	at	12:35	for	1 mn	0.50	0.03
Phone calls	12/16/97	9839200	on	12:16	at	13:37	for	1 mn	0.50	0.03
Phone calls	12/16/97	2343435	on	12:16	at	12:54	for	1 mn	0.50	0.03
Phone calls	12/16/97	3860084	on	12:16	at	12:56	for	1 mn	0.50	0.03
Phone calls	12/16/97	3860084	on	12:16	at	13:00	for	3 mn	0.50	0.03
Phone calls	12/16/97	2155335200	on	12:16	at	13:14	for	1 mn	2.25	0.14
Phone calls	12/16/97	2155335200	on	12:16	at	13:26	for	6 mn	3.50	0.21
Phone calls	12/16/97	9839200	on	12:16	at	17:21	for	1 mn	0.50	0.03

BALANCE DUE ▶

RECYCLED PAPER

For reservations, please call 800-833-4353.

5489

SUMMERFIELD SUITES Hotel

	Date	Description				Amount	Tax
Phone call:	12/16/97	6627370	on 12:16	at 10:41	for 1 mn	0.50	0.02
Phone call:	12/16/97	2134338405	on 12:16	at 17:03	for 1 mn	2.50	0.10
Phone call:	12/16/97	9839200	on 12:16	at 18:31	for 3 mn	0.50	0.03
Phone call:	12/16/97	2733947	on 12:16	at 18:45	for 3 mn	0.50	0.03
Phone call:	12/16/97	9839200	on 12:16	at 17:51	for 1 mn	0.50	0.03
Phone call:	12/16/97	2345435	on 12:16	at 18:00	for 2 mn	0.50	0.03
Phone call:	12/16/97	2343135	on 12:16	at 18:20	for 3 mn	0.50	0.03
Phone call:	12/16/97	2137761200	on 12:16	at 18:25	for 3 mn	4.00	0.24
Phone call:	12/16/97	8689850	on 12:16	at 17:47	for 1 mn	0.50	0.03
Phone call:	12/16/97	4261612	on 12:16	at 19:58	for 1 mn	0.50	0.03
Phone call:	12/16/97	6672100	on 12:16	at 20:02	for 2 mn	0.50	0.03
Phone call:	12/16/97	2763763	on 12:16	at 21:56	for 35 mn	0.50	0.03
Phone call:	12/17/97	726-1911	on 12:17	at 03:53	for 1 mn	0.50	0.03
Phone call:	12/17/97	3766191	on 12:17	at 07:52	for 2 mn	0.50	0.03
Phone call:	12/17/97	9833400	on 12:17	at 08:41	for 2 mn	0.50	0.03
Phone call:	12/17/97	2-21609	on 12:17	at 07:42	for 1 mn	0.50	0.03
Phone call:	12/17/97	2045560	on 12:17	at 09:52	for 1 mn	0.50	0.03
Phone call:	12/17/97	4287858	on 12:17	at 09:54	for 1 mn	0.50	0.03
Phone call:	12/17/97	9838271	on 12:17	at 10:00	for 2 mn	0.50	0.03
Phone call:	12/17/97	2558830	on 12:17	at 10:14	for 4 mn	0.50	0.03
Phone call:	12/17/97	2154464643	on 12:17	at 10:31	for 4 mn	3.00	0.18
Phone call:	12/17/97	2153375805	on 12:17	at 10:32	for 2 mn	2.50	0.15
Phone call:	12/17/97	9839200	on 12:17	at 11:03	for 1 mn	0.50	0.03
Phone call:	12/17/97	2155588092	on 12:17	at 11:12	for 2 mn	2.50	0.15
Phone call:	12/17/97	411	on 12:17	at 14:32	for 2 mn	0.50	0.03

BALANCE DUE ▶

RECYCLED PAPER

For reservations, please call 800-833-4353.

SUMMERFIELD SUITES Hotels

	Date	Description						Amount	Tax
hone call:	12/16/97	4625320	on	12:16	at	13:41	for	4 mn	0.50	0.03
hone call:	12/16/97	2157939405	on	12:16	at	17:45	for	1 mn	2.25	0.14
hone call:	12/16/97	9839200	on	12:16	at	18:36	for	2 mn	0.50	0.03
hone call:	12/16/97	7273947	on	12:16	at	18:47	for	5 mn	0.50	0.03
hone call:	12/16/97	9839200	on	12:16	at	19:01	for	1 mn	0.50	0.03
hone call:	12/16/97	2343435	on	12:16	at	18:00	for	9 mn	0.50	0.03
hone call:	12/16/97	2343435	on	12:16	at	19:20	for	8 mn	0.50	0.03
hone call:	12/16/97	8154241200	on	12:16	at	18:28	for	8 mn	4.00	0.24
hone call:	12/16/97	8669850	on	12:16	at	17:49	for	2 mn	0.50	0.03
hone call:	12/16/97	6241615	on	12:16	at	19:58	for	1 mn	0.50	0.03
hone call:	12/16/97	6472100	on	12:16	at	20:02	for	2 mn	0.50	0.03
hone call:	12/16/97	6733797	on	12:16	at	21:55	for	30 mn	0.50	0.03
hone call:	12/17/97	3966191	on	12:17	at	08:52	for	1 mn	0.50	0.03
hone call:	12/17/97	3966191	on	12:17	at	09:33	for	2 mn	0.50	0.03
hone call:	12/17/97	9833600	on	12:17	at	09:41	for	3 mn	0.50	0.03
hone call:	12/17/97	7221600	on	12:17	at	09:42	for	4 mn	0.50	0.03
hone call:	12/17/97	2367560	on	12:17	at	09:52	for	1 mn	0.50	0.03
hone call:	12/17/97	4289858	on	12:17	at	09:54	for	1 mn	0.50	0.03
hone call:	12/17/97	9832771	on	12:17	at	10:00	for	3 mn	0.50	0.03
hone call:	12/17/97	2858830	on	12:17	at	10:16	for	4 mn	0.50	0.03
hone call:	12/17/97	2154494431	on	12:17	at	10:31	for	4 mn	3.00	0.18
hone call:	12/17/97	2156376805	on	12:17	at	10:34	for	2 mn	2.50	0.15
hone call:	12/17/97	9839800	on	12:17	at	11:03	for	1 mn	0.50	0.03
hone call:	12/17/97	2155988982	on	12:17	at	11:12	for	2 mn	2.50	0.15
hone call:	12/17/97	411	on	12:17	at	14:32	for	2 mn	0.50	0.03

BALANCE DUE ▶

ECYCLED PAPER

For reservations, please call 800-833-4353.

5491



SUMMERFIELD SUITES HOTEL

Date	Description	Item		Amount	Tax
phone call	12/17/97	3310852	on 12:17 at 14:16 for	1 min	0.50	0.03
phone call	12/17/97	3310852	on 12:17 at 14:42 for	1 min	0.50	0.03
phone call	12/17/97	2622265	on 12:17 at 14:48 for	1 min	0.50	0.03
phone call	12/18/97	3944191	on 12:18 at 14:55 for	2 min	0.50	0.03
phone call	12/19/97	6042272552	on 12:19 at 07:30 for	3 min	2.55	0.15
phone call	12/20/97	4245809	on 12:20 at 14:10 for	1 min	0.50	0.03
phone call	12/20/97	3886900	on 12:20 at 14:40 for	1 min	0.50	0.03
phone call	12/20/97	2231101	on 12:20 at 15:15 for	1 min	0.50	0.03
misc charge	12/15/97	LIQUR	BACARDI RUM	1 ea	2.50	0.10
misc charge	12/15/97	FOOD	UNCLE B. RICE	1 ea	2.00	0.00
misc charge	12/15/97	FOOD	ALFREDO MIX	1 ea	2.00	0.00
misc charge	12/16/97	FOOD GUEST	GROCERY	1 ea	57.01	0.00
misc charge	12/16/97	LIQR	BACARDI RUM	1 ea	14.66	0.34
misc charge	12/16/97	TAX	CHEEK DETER	1 ea	0.42	0.34	0.04
misc charge	12/18/97	NON	PASTA	1 ea	1.50	1.50	0.00
misc charge	12/18/97	NON	PASTA SAUCE	1 ea	3.50	3.50	0.00
misc charge	12/18/97	LIQR	SAMBUCA	1 ea	6.84	6.84	0.41
misc charge	12/20/97	TAX	HAIR SPRAY	1 ea	1.82	1.82	0.11
misc charge	12/20/97	NON	CANDY	1 ea	0.75	0.75	0.00

Total 143.07

THANK YOU CHOOSING SUMMERFIELD SUITES HOTEL!
FOR FUTURE RESERVATIONS DIAL 1-800-833-4353

BALANCE DUE ▶

RECYCLED PAPER

For reservations, please call 800-833-4353.

SUMMERFIELD SUITES.com

SUMMERFIELD SUITES HOTEL
3050 CHAIN BRIDGE ROAD

Date	Description		Amount	Tax
Room chg - Guest Shared	12/14/97-12/20/97	7 Nights @ 110.00	770.00	13.53
Payments	12/14/97 CASH	-400.00 CASH DEPOSIT	-396.60	0.00
Payments	12/21/97 CASH	CASH PAYMENT	-110.00	0.00

Total

BALANCE DUE ▶

THANK YOU CHOOSING SUMMERFIELD SUITES HOTEL!
FOR FUTURE RESERVATIONS DIAL 1-800-833-4353

RECYCLED PAPER

For reservations, please call 800-833-4353.

5493

SUMMERFIELD SUITES HOTEL

	Date	Description		Amount	Tax
m chg - Guest share:	12/14/97-12/20/97	2 Nights at 110.00		220.00	13.33
Payment:	12/14/97 CASH	400.00	CASH DEPOSIT	-364.60	0.00
Payment:	12/21/97 CASH		CASH PAYMENT	-210.00	0.00

Total

THANK YOU CHOOSING SUMMERFIELD SUITES HOTEL!

BALANCE DUE ▶

FOR FUTURE RESERVATIONS DIAL 1-800-833-4353

ECYCLED PAPER

For reservations, please call 800-833-4353.

SUMMERFIELD SUITES HOTEL

FOLIO

[redacted]

MMERFIELD SUITES HOTEL
3000 CRAWFORD PLACE

MT. LAUREL, NJ 08054

[redacted] Page: 1

GUEST WILL UPDATE ACCT EVERY 5 DAYS [redacted] Room Number: 002-7

Suite Rate: $110.00

	Date	Description		Amount	Tax
m chg - Guest share:	12/14/97-12/20/97	7 Nights at 110.00		770.00	13.33
Payment:	12/14/97	CASH	400.00 CASH DEPOSIT	-964.60	0.00

(1)

Total

THANK YOU CHOOSING SUMMERFIELD SUITES HOTEL!
FOR FUTURE RESERVATIONS DIAL 1-800-833-4353

BALANCE DUE ▶ [redacted] -191.07

-18.21

ECYCLED PAPER

For reservations, please call 800-833-4353.

5495

SUMMERFIELD SUITES Hotels

SUMMERFIELD SUITES HOTEL
[illegible]

[illegible]

	Date	Description		Amount	Tax
[illegible]	12/14/97-12/20/97	7 Nights @	110.00	770.00	18.58
Payment	12/14/97	CASH	400.00	CASH DEPOSIT	-944.58	0.00

Thank you
THANK YOU CHOOSING SUMMERFIELD SUITES HOTEL!
FOR FUTURE RESERVATIONS DIAL 1-800-833-4353

BALANCE DUE ▶

RECYCLED PAPER

For reservations, please call 800-833-4353.

SUMMERFIELD SUITES HOTEL

FOLIO

SUMMERFIELD SUITES HOTEL
3000 CRAWFORD PLACE
MT. LAUREL, NJ 08054
[redacted]
GUEST WILL UPDATE ACCT EVERY 5 DAYS

[redacted]
ROOM NUMBER: 0027
Suite Rate: 110.00

	Date	Description						Amount	Tax
Phone call:	12/14/97	2157338405	on	12:14	at	16:08	for 1 mn	2.25	0.14
Phone call:	12/15/97	2158524360	on	12:14	at	22:55	for 1 mn	2.25	0.14
Phone call:	12/15/97	21573384O5	on	12:15	at	07:24	for 5 mn	3.25	0.20
Phone call:	12/15/97	2157338405	on	12:15	at	11:24	for 5 mn	3.25	0.20
Phone call:	12/15/97	21573384O5	on	12:15	at	11:28	for 4 mn	3.00	0.18
Phone call:	12/15/97	2343435	on	12:15	at	12:28	for 2 mn	0.50	0.03
Phone call:	12/15/97	9839200	on	12:15	at	20:09	for 1 mn	0.50	0.03
Phone call:	12/15/97	2346020	on	12:15	at	20:35	for 1 mn	0.50	0.03
Phone call:	12/15/97	2346020	on	12:15	at	20:36	for 1 mn	0.50	0.03
Phone call:	12/15/97	3860084	on	12:15	at	20:45	for 1 mn	0.50	0.03
Phone call:	12/16/97	8660111	on	12:16	at	11:22	for 7 mn	0.50	0.03
Phone call:	12/16/97	8660111	on	12:16	at	11:07	for 1 mn	0.50	0.03
Phone call:	12/16/97	9839200	on	12:16	at	11:09	for 1 mn	0.50	0.03
Phone call:	12/16/97	3860084	on	12:16	at	11:10	for 1 mn	0.50	0.03
Phone call:	12/16/97	8660111	on	12:16	at	11:15	for 5 mn	0.50	0.03
Phone call:	12/16/97	2343435	on	12:16	at	12:35	for 1 mn	0.50	0.03
Phone call:	12/16/97	9839200	on	12:16	at	12:37	for 1 mn	0.50	0.03
Phone call:	12/16/97	2343435	on	12:16	at	12:54	for 1 mn	0.50	0.03
Phone call:	12/16/97	3860084	on	12:16	at	12:56	for 1 mn	0.50	0.03
Phone call:	12/16/97	3860084	on	12:16	at	13:00	for 3 mn	0.50	0.03
Phone call:	12/16/97	2155335200	on	12:16	at	13:14	for 1 mn	2.25	0.14
Phone call:	12/16/97	2155335200	on	12:16	at	13:20	for 6 mn	3.50	0.21
Phone call:	12/16/97	9839200	on	12:16	at	15:21	for 1 mn	0.50	0.03
Phone call:	12/16/97	6655370	on	12:16	at	15:41	for 4 mn	0.50	0.03
Phone call:	12/16/97	2157338405	on	12:16	at	17:45	for 1 mn	2.25	0.14

BALANCE DUE ▶ [redacted]

RECYCLED PAPER

For reservations, please call 800-833-4353.

5497

SUMMERFIELD SUITES Hotel

	Date	Description					Amount	Tax
Phone call:	12/14/97	2157338405	on	12:19	at	16:[illegible]	for	1 mn	2.25	0.14
Phone call:	12/15/97	2158524360	on	12:14	at	22:56	for	1 mn	2.25	0.14
Phone call:	12/15/97	2157338405	on	12:15	at	07:24	for	5 mn	3.00	0.20
Phone call:	12/15/97	2157338405	on	12:15	at	11:24	for	5 mn	3.00	0.20
Phone call:	12/15/97	2157338405	on	12:15	at	11:28	for	3 mn	3.00	0.18
Phone call:	12/15/97	2343435	on	12:15	at	12:28	for	2 mn	0.50	0.03
Phone call:	12/15/97	9839200	on	12:15	at	20:09	for	1 mn	0.50	0.03
Phone call:	12/15/97	2346020	on	12:15	at	20:35	for	1 mn	0.50	0.03
Phone call:	12/15/97	2346020	on	12:15	at	20:36	for	1 mn	0.50	0.03
Phone call:	12/15/97	3860084	on	12:15	at	20:45	for	1 mn	0.50	0.03
Phone call:	12/16/97	8660111	on	12:16	at	11:23	for	2 mn	0.50	0.03
Phone call:	12/16/97	8660111	on	12:16	at	11:07	for	1 mn	0.50	0.03
Phone call:	12/16/97	9839200	on	12:16	at	11:09	for	1 mn	0.50	0.03
Phone call:	12/16/97	3860084	on	12:16	at	11:10	for	1 mn	0.50	0.03
Phone call:	12/16/97	8660111	on	12:16	at	11:15	for	5 mn	0.50	0.03
Phone call:	12/16/97	2343435	on	12:16	at	12:35	for	1 mn	0.50	0.03
Phone call:	12/16/97	9839200	on	12:16	at	12:37	for	1 mn	0.50	0.03
Phone call:	12/16/97	2343435	on	12:16	at	12:54	for	6 mn	0.50	0.03
Phone call:	12/16/97	3860084	on	12:16	at	12:56	for	1 mn	0.50	0.03
Phone call:	12/16/97	3860084	on	12:16	at	13:00	for	3 mn	0.50	0.03
Phone call:	12/16/97	2155335200	on	12:16	at	13:14	for	1 mn	2.25	0.14
Phone call:	12/16/97	2155335200	on	12:16	at	13:20	for	1 mn	2.25	0.14
Phone call:	12/16/97	9839200	on	12:16	at	15:21	for	1 mn	0.50	0.03
Phone call:	12/16/97	8655320	on	12:16	at	15:41	for	4 mn	0.50	0.03
Phone call:	12/16/97	2157338405	on	12:16	at	17:45	for	1 mn	2.25	0.14

BALANCE DUE ▶

RECYCLED PAPER

For reservations, please call 800-833-4353.

SUMMERFIELD SUITES Hotel

	Date	Description				Amount	Tax
Phone call:	12/16/97	9839200	on 12:16	at 16:21	for 3 mn	0.50	0.03
Phone call:	12/16/97	7229742	on 12:16	at 18:45	for 5 mn	0.50	0.03
Phone call:	12/16/97	9839200	on 12:16	at 17:11	for 1 mn	0.50	0.03
Phone call:	12/16/97	3368435	on 12:16	at 18:00	for 5 mn	0.50	0.03
Phone call:	12/16/97	2048435	on 12:16	at 18:20	for 8 mn	0.50	0.03
Phone call:	12/16/97	2157761200	on 12:16	at 18:28	for 17 mn	4.00	0.24
Phone call:	12/16/97	9839200	on 12:16	at 17:42	for 3 mn	0.50	0.03
Phone call:	12/16/97	7441197	on 12:16	at 19:58	for 1 mn	0.50	0.03
Phone call:	12/16/97	6872100	on 12:16	at 20:02	for 2 mn	0.50	0.03
Phone call:	12/17/97	6903792	on 12:17	at 21:55	for 35 mn	0.50	0.03
Phone call:	12/17/97	3268121	on 12:17	at 08:52	for 1 mn	0.50	0.03
Phone call:	12/17/97	3268121	on 12:17	at 09:23	for 2 mn	0.50	0.03
Phone call:	12/17/97	9839200	on 12:17	at 09:41	for 2 mn	0.50	0.03
Phone call:	12/17/97	7221600	on 12:17	at 09:47	for 4 mn	0.50	0.03
Phone call:	12/17/97	2935560	on 12:17	at 09:52	for 1 mn	0.50	0.03
Phone call:	12/17/97	4289858	on 12:17	at 09:54	for 1 mn	0.50	0.03
Phone call:	12/17/97	9839200	on 12:17	at 10:09	for 2 mn	0.50	0.03
Phone call:	12/17/97	2358830	on 12:17	at 10:14	for 4 mn	0.50	0.03
Phone call:	12/17/97	2154441641	on 12:17	at 10:31	for 4 mn	3.00	0.18
Phone call:	12/17/97	2156376305	on 12:17	at 10:34	for 2 mn	2.50	0.15
Phone call:	12/17/97	9839200	on 12:17	at 11:03	for 1 mn	0.50	0.03
Phone call:	12/17/97	2155938282	on 12:17	at 11:12	for 2 mn	2.50	0.15
Phone call:	12/17/97	11	on 12:17	at 14:32	for 2 mn	0.50	0.03
Phone call:	12/17/97	3764011	on 12:17	at 14:36	for 3 mn	0.50	0.03
Phone call:	12/17/97	3380352	on 12:17	at 15:42	for 1 mn	0.50	0.03

BALANCE DUE ▶

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5499

SUMMERFIELD SUITES® HOTEL

FOLIO

SUMMERFIELD SUITES HOTEL
3000 CRAWFORD PLACE

Date: 12/31/97 Page: 3

MT. LAUREL, NJ 08054
PEREZ, GLORIA Arrival: 12/14/97 Departure: 03/01/98
GUEST WILL UPDATE ACCT EVERY 8 DAYS Room Number: 0027

	Date	Description							Amount	Tax
Phone calls	12/15/97	9839200	on	12:16	at	15:3.	for	2 mn	0.20	0.00
Phone calls	12/15/97	7272947	on	12:16	at	15:45	for	5 mn	0.50	0.17
Phone calls	12/15/97	9839100	on	12:16	at	17:11	for	1 mn	0.50	0.02
Phone calls	12/15/97	2343435	on	12:16	at	18:30	for	9 mn	0.90	0.03
Phone calls	12/15/97	2343435	on	12:16	at	18:20	for	3 mn	0.50	0.17
Phone Call:	12/15/97	2152757200	on	12:16	at	18:28	for	8 mn	4.00	0.24
Phone calls	12/15/97	8e89550	on	12:16	at	17:49	for	3 mn	0.50	0.03
Phone calls	12/15/97	4241:17	on	12:16	at	19:35	for	1 mn	0.50	0.02
Phone calls	12/15/97	e677100	on	12:16	at	20:12	for	2 mn	0.50	0.03
Phone calls	12/15/97	8953799	on	12:16	at	21:55	for	28 mn	0.50	0.03
Phone calls	12/17/97	3966191	on	12:17	at	08:52	for	1 mn	0.50	0.03
Phone calls	12/17/97	3966191	on	12:17	at	09:25	for	2 mn	0.50	0.03
Phone calls	12/17/97	9833600	on	12:17	at	09:41	for	2 mn	0.50	0.03
Phone calls	12/17/97	7221600	on	12:17	at	09:47	for	4 mn	0.50	0.03
Phone calls	12/17/97	8349540	on	12:17	at	09:52	for	1 mn	0.50	0.02
Phone calls	12/17/97	4269978	on	12:17	at	09:54	for	1 mn	0.50	0.03
Phone calls	12/17/97	9833771	on	12:17	at	10:00	for	5 mn	0.50	0.03
Phone calls	12/17/97	2358836	on	12:17	at	17:14	for	4 mn	0.50	0.03
Phone calls	12/17/97	2174544421	on	12:17	at	18:31	for	4 mn	3.00	0.13
Phone calls	12/17/97	2156374635	on	12:17	at	19:34	for	2 mn	3.00	0.10
Phone calls	12/17/97	9839200	on	12:17	at	11:00	for	1 mn	0.50	0.03
Phone calls	12/17/97	2155798952	on	12:17	at	11:12	for	2 mn	2.00	0.10
Phone calls	12/17/97	411	on	12:17	at	14:32	for	1 mn	0.50	0.03
Phone calls	12/17/97	3840411	on	12:17	at	14:35	for	3 mn	0.00	0.00
Phone calls	12/17/97	3380852	on	12:17	at	14:48	for	1 mn	0.50	0.02

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SUMMERFIELD SUITES HOTEL
5000 CRANFORD PLACE

Date	Description				Amount	Tax
Phone call	12/17/97	3832245	on 12:17 a1	14:46 for 1 min	0.50	0.03
Phone call	12/18/97	3736191	on 12:18 a6	15:51 for 3 min	0.50	0.03
Phone call	12/19/97	8035223757	on 12:19 a6	07:35 for 3 min	2.25	0.14
Phone call	12/20/97	4245300	on 12:20 a1	16:10 for 1 min	0.50	0.03
Phone call	12/20/97	3846900	on 12:20 a1	12:46 for 1 min	0.50	0.03
Phone call	12/20/97	7221601	on 12:20 a6	15:15 for 1 min	0.50	0.03
Phone call	12/20/97	4412000	on 12:20 a6	20:52 for 9 min	0.50	0.03
Misc charges	12/15/97	LIQR	BACARDI RUM	1 a6	2.40	0.40
Misc charges	12/15/97	FOOD	UNCLE B. RICE	1 a1	2.00	0.00
Misc charges	12/15/97	FOOD	ALFREDO MIX	1 a1	2.00	0.00
Misc charges	12/16/97	FOOD GUEST GROCERY		1 a1	57.81	0.00
Misc charges	12/16/97	LIQR	BACARDI RUM	1 a6	5.60	0.93
Misc charges	12/16/97	TAX	CHEER DEER	2 a1	0.47	0.06
Misc charges	12/18/97	NON	PASTA	1 a6	1.00	0.00
Misc charges	12/18/97	NON	PASTA SAUCE	1 a6	3.50	0.00
Misc charges	12/18/97	LIQR	SAMBUCA	1 a6	5.04	0.41
Misc charges	12/20/97	TAX	HAIR SPRAY	1 a1	1.69	0.11
Misc charges	12/20/97	NON	CANDY	1 a6	0.75	0.00
Misc charges	12/20/97	LIQR GSTF LIQUOR		1 a6	5.60	0.40
Misc charges	12/20/97	NON	TIC-TACS	1 a6	0.75	0.00

Total

BALANCE DUE ▶

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5501

SUMMERFIELD SUITES HOTEL

	Date	Description					Amount	Tax
Phone calls	12/17/97	2822265	on	12:17	at	14:48	for 1 mn	0.50	0.03
Phone calls	12/18/97	3766191	on	12:18	at	16:25	for 2 mn	0.50	0.03
Phone calls	12/19/97	8025287752	on	12:19	at	07:33	for 3 mn	2.75	0.16
Phone calls	12/20/97	4245000	on	12:20	at	14:10	for 1 mn	0.50	0.03
Phone calls	12/20/97	3834900	on	12:20	at	14:46	for 1 mn	0.50	0.03
Phone calls	12/20/97	7221101	on	12:20	at	15:15	for 1 mn	0.50	0.03
Phone calls	12/20/97	4412000	on	12:20	at	20:39	for 1 mn	0.50	0.03
Isc charges	12/15/97	LIQR		BACARDI RUM		1 at	6.00	6.00	0.00
Isc charges	12/15/97	FOOD		UNCLE B. RICE		1 at	2.00	2.00	0.00
Isc charges	12/15/97	FOOD		ALFREDO MIX		1 at	2.00	2.00	0.00
Isc charges	12/16/97	FOOD	GUEST	GROCERY		1 at	32.31	32.31	0.00
Isc charges	12/16/97	LIQR		BACARDI RUM		1 at	5.66	5.66	0.34
Isc charges	12/16/97	TAX		CHEER BEER		2 at	0.42	0.84	0.06
Isc charges	12/18/97	NON		PASTA		1 at	1.50	1.50	0.00
Isc charges	12/18/97	NON		PASTA SAUCE		1 at	3.50	3.50	0.00
Isc charges	12/18/97	LIQR		SAMUCA		1 at	6.84	6.84	0.41
Isc charges	12/20/97	TAX		HAIR SPRAY		1 at	1.89	1.89	0.11
Isc charges	12/20/97	NON		CANDY		1 at	0.75	0.75	0.00
Isc charges	12/20/97	LIQR	GSTF	LIQUOR		1 at	6.40	6.40	0.40
Isc charges	12/20/97	NON		TIC-TACS		1 at	0.75	0.75	0.00

Total

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